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I. INTRODUCTION

1. The International Co-Prosecutor (“ICP”) hereby responds to Yim Tith’s appeal¹ of the International Co-Investigating Judge (“ICIJ”)’s closing order (“Indictment”) issued on 28 June 2019² (“Yim Tith Appeal”). The ICIJ indicted Yim Tith for genocide, crimes against humanity, war crimes, and violations of the 1956 Cambodian Penal Code, committing him for trial.³
2. Yim Tith’s Appeal fails to meet the applicable standard for appellate review. First, several of Yim Tith’s grounds are inadmissible as he fails to demonstrate that the Pre-Trial Chamber (“PTC”)’s appellate intervention is required pursuant to Internal Rule 21⁴ to prevent irremediable damage to the fairness of proceedings or to fundamental fair trial rights. Second, beyond the fact that many of Yim Tith’s appeal grounds are unclear regarding the type of error being alleged, none of the arguments contained in his grounds or sub-grounds demonstrate an error of law invalidating the Indictment, an error of fact occasioning a miscarriage of justice, or an abuse of discretion forcing the conclusion that the ICIJ failed to exercise his discretion judiciously. In summary, Yim Tith fails to demonstrate any error or abuse which was fundamentally determinative of the ICIJ’s discretionary decision to find Yim Tith to be among those “most responsible” for crimes committed during the Democratic Kampuchea (“DK”) regime and indict him.

II. PRELIMINARY SUBMISSIONS

3. Yim Tith’s Appeal must be read with caution. As will be addressed in detail throughout this Response, Yim Tith selectively assesses the Indictment and its underlying evidence, omits to assess evidence in a holistic manner, and misrepresents witness evidence. The following overarching issues are addressed first: inadmissible appeal grounds, unsubstantiated claims, and incorrect legal standards and principles.

A. APPEAL GROUNDS 1, 2, AND 3 ARE INADMISSIBLE

4. Yim Tith improperly claims that “the PTC’s liberal interpretation of Rule 21 expands the

¹ **D382/22** Yim Tith’s Appeal of the International Co-Investigating Judge’s Closing Order in Case 004, 2 Dec. 2019 (“Yim Tith Appeal”).

² **D382** Indictment.

³ **D382** Indictment, EN 01580615-21.

⁴ Extraordinary Chambers in the Courts of Cambodia (“ECCC”), Internal Rules (Rev. 9), as revised on 16 Jan. 2015 (“Internal Rules” or “Rules”).

right of appeal.”⁵ In fact, the PTC has held that Rule 21 does not automatically confer appellate jurisdiction to consider arguments based on fair trial rights or matters implicating the fairness of proceedings.⁶ Rather, the burden is on the moving party to “demonstrate that the particular circumstances require the Chamber’s intervention at the stage where the appeal was filed to avoid *irremediable damage* to the fairness of the proceedings or to fundamental fair trial rights.”⁷ Arguments based on hypothetical matters and speculation are inadmissible.⁸

5. Yim Tith’s ground 1 is inadmissible. Yim Tith fails to demonstrate that his various claims of fair trial rights violations relating to the conduct of the investigation either individually or cumulatively undermine the integrity of the proceedings in a manner as to render a fair trial impossible. Sub-ground 1.1 is inadmissible as the Co-Prosecutors’ disagreement does not implicate the fairness of the proceedings because the Third Introductory Submission (“3IS”) was validly sent forward to the Co-Investigating Judges (“CIJs”). Sub-ground 1.2 is inadmissible because the claimed impact of the leak of the 3IS is purely speculative, given the information that was rightly in the public domain regarding the allegations in Case 004. Sub-ground 1.3 is inadmissible because the claim that the Documentation Center of Cambodia (“DC-Cam”) contaminated the Case 004 investigation is also based solely on speculation. Sub-ground 1.4 is inadmissible because the issue of Yim Tith’s access to the Case 004 file has already been adjudged by the PTC. Sub-ground 1.5 is inadmissible because Yim Tith’s claim of undue delay does not implicate the fairness of the proceedings as his rights have been safeguarded throughout the process and his claim that the passage of time has had a detrimental effect on the evidence is speculative.
6. Yim Tith’s ground 2 is inadmissible. Yim Tith claims that the Indictment is defective for failing to set out material facts and their legal characterisation. The PTC has held that “alleged defects in the form of the indictment [...] are clearly non-jurisdictional in nature and [...] therefore inadmissible at the pre-trial stage of the proceedings in light of the

⁵ **D382/22** Yim Tith Appeal, para. 58.

⁶ Case 004/2-**D359/24** & **D360/33** PTC Closing Order Considerations, para. 147 and accompanying citations.

⁷ Case 004/2-**D359/24** & **D360/33** PTC Closing Order Considerations, para. 147 (emphasis added). *See also* **D284/1/4** PTC Disclosure Decision, para. 21; **D236/1/1/8** PTC Decision on *Im Chaem* Appeal, para. 28; **D205/1/1/2** PTC Decision on Clarification Request, para. 7.

⁸ **D284/1/4** PTC Disclosure Decision, para. 24.

plain meaning of Internal Rule 74(3)(a) and Chapter II of the ECCC [L]aw.”⁹

7. Yim Tith’s ground 3 is inadmissible. Yim Tith’s claim that the Indictment exceeds the “temporal and geographic scope of the investigation”¹⁰ amounts to an impermissible challenge to the form of the Indictment.¹¹ The PTC has held that claims of an “improperly charged geographical scope” cannot “constitute personal jurisdiction challenges” as they do not “directly implicate the gravity of the alleged crimes or [the Charged Person’s] responsibility.”¹²

B. APPEAL CONTAINS UNSUBSTANTIATED CLAIMS

8. The Supreme Court Chamber has held that arguments “that merely claim that a given decision or finding [...] was erroneous, without actually substantiating why the decision or finding was in error” are not to be considered.¹³ Yim Tith’s Appeal makes a series of admissible but unsubstantiated claims.
9. For example, Yim Tith introduces an argument in his conclusion to sub-ground 5.2.i, asserting a lack of evidence that Yim Tith had or carried out specific duties or responsibilities.¹⁴ In his conclusion to sub-ground 5.2.iv, Yim Tith alleges that the ICIJ did not establish the “membership” element of the alleged joint criminal enterprise (“JCE”)s¹⁵ and raises a duress argument.¹⁶ At the outset of sub-ground 5.3.ii, Yim Tith suggests that allegations regarding his statements against the Vietnamese would not amount to a significant contribution, even if proven.¹⁷ In parenthesis, Yim Tith asserts that these allegations “were not” proven.¹⁸ In the same sub-ground, Yim Tith suggests that the Indictment contains a “lack of specificity about Mr Yim Tith’s responsibilities at different stages during the periods for which he was indicted”.¹⁹

⁹ Case 004/2-D359/24 & D360/33 PTC Closing Order Considerations, para. 139 and accompanying citations.

¹⁰ D382/22 Yim Tith Appeal, para. 97.

¹¹ Case 004/2-D359/24 & D360/33 PTC Closing Order Considerations, para. 156. *See also* Case 002-D427/1/30 PTC *Ieng Sary* Closing Order Decision, para. 47; Case 002-D427/2/15 & D427/3/15 PTC Closing Order Decision, para. 63

¹² Case 004/2-D359/24 & D360/33 PTC Closing Order Considerations, para. 156.

¹³ *See* Case 002-F36 Case 002/01 AJ, paras 101-102.

¹⁴ D382/22 Yim Tith Appeal, paras 151-152.

¹⁵ D382/22 Yim Tith Appeal, para. 219.

¹⁶ D382/22 Yim Tith Appeal, para. 217 (“The ICIJ ignored or misapplied his own findings from Case 004/1 that ‘decisions were made at the top and then implemented by the lower levels on the pain of personal consequences at any level,’ and that [...] the top echelons [...] could interfere at will.”).

¹⁷ D382/22 Yim Tith Appeal, para. 246.

¹⁸ D382/22 Yim Tith Appeal, para. 246.

¹⁹ D382/22 Yim Tith Appeal, para. 249.

10. None of these arguments are developed any further than the mere assertion and contain no references or citations for support. This is clearly insufficient for Yim Tith to meet his burden on appeal.

C. APPEAL GROUNDS RELY ON INCORRECT LEGAL STANDARDS AND PRINCIPLES

11. Standard of proof for indictment: The PTC has held that the standard of proof for issuing an indictment is “sufficient evidence” of the charges,²⁰ meaning there is a “plausibility” or “probability” of guilt.²¹ This standard is less than “beyond reasonable doubt”,²² because a determination at “the pre-trial stage [...] does not involve any determination of guilt or innocence.”²³
12. Yim Tith repeatedly relies on an incorrect standard of proof when alleging errors. For example, Yim Tith erroneously asserts that, when faced with allegedly circumstantial, contradictory, or exculpatory evidence, the CIJs are required to demonstrate that the finding must be “the *only* reasonable conclusion that can be drawn from the evidence”²⁴ or that “no reasonable trier of fact could have reached *any* other conclusion”.²⁵ Yim Tith is thus incorrectly relying on the standard of proof applicable at the trial stage of proceedings.
13. Additionally, and contrary to Yim Tith’s claim,²⁶ the principle of *in dubio pro reo* does not apply to factual findings at the pre-trial stage. Rather, *in dubio pro reo* is a rule of evidentiary proof that is a corollary to the presumption of innocence and is applicable when doubt prevents a trier of fact from making a finding beyond reasonable doubt.²⁷ Yim Tith’s applicable law section, as well as his sub-grounds 5.2.iii to 5.2.vi erroneously claim that the *in dubio pro reo* principle applies to findings in the Indictment.²⁸

²⁰ Case 004/2-D359/24 & D360/33 PTC Closing Order Considerations, para. 84; Case 004/1-D308/3/1/20 PTC Closing Order Considerations, para. 61.

²¹ Case 004/2-D359/24 & D360/33 PTC Closing Order Considerations, paras 84-85 and accompanying citations; Case 004/1-D308/3/1/20 PTC Closing Order Considerations, para. 61.

²² Case 004/2-D359/24 & D360/33 PTC Closing Order Considerations, paras 84-85; Case 004/1-D308/3/1/20 PTC Closing Order Considerations, paras 61-62; Case 002-D427 Closing Order, para. 1323.

²³ Case 004/2-D359/24 & D360/33 PTC Closing Order Considerations, para. 163. *See also* para. 85; Case 002-D427 Closing Order, para. 1323.

²⁴ D382/22 Yim Tith Appeal, para. 18 (emphasis added).

²⁵ D382/22 Yim Tith Appeal, para. 188 (sub-ground 5.2.iii) (emphasis added). *See also* paras 140 (sub-ground 5.1), 197 (sub-ground 5.2.iv), 202 (sub-ground 5.2.v), 215 (sub-ground 5.2.vi).

²⁶ D382/22 Yim Tith Appeal, para. 18.

²⁷ Case 002-F36 Case 002/01 AJ, para. 841. *See also* Limaj AJ, para. 21; Renzaho AJ, para. 474. *See e.g.* Case 004/1-D308/3/1/20 PTC Closing Order Considerations, paras 60-63; Case 004/1-D308/3 Closing Order, para. 2.

²⁸ D382/22 Yim Tith Appeal, paras 18 (applicable law), 188 (sub-ground 5.2.iii), 197 (sub-ground 5.2.iv),

14. Principle of freedom of evidence: The PTC has held that “all evidence is admissible”,²⁹ “generally has the same probative value”,³⁰ and “enjoys the same legal presumption of reliability, provided it has been legally collected”.³¹ Contrary to Yim Tith’s suggestion, there is no “inherently weak” evidence before the ECCC.³² Accordingly, hearsay evidence is admissible and may be relied on.³³ Likewise, corroboration is not required as a matter of law before the ECCC.³⁴ Thus, Yim Tith erroneously asserts in sub-grounds 5.1, 5.2, 5.3.i, and 5.3.iii that the ICIJ erred by relying on hearsay evidence,³⁵ uncorroborated evidence,³⁶ and uncorroborated hearsay evidence.³⁷
15. Reasoned decision: Judges are presumed to have evaluated all the evidence and do not need to mention every piece of evidence in the case file,³⁸ provided there is no indication that any particular piece of evidence has been completely disregarded.³⁹ However, this presumption may be rebutted when evidence which is *clearly relevant* to the findings is not addressed by their reasoning.⁴⁰
16. Yim Tith fails to demonstrate in sub-ground 5.2 that the ICIJ did not consider the evidence of witnesses who Yim Tith claims had not heard of him when making a determination on Yim Tith’s likely positions and authority in the Southwest and Northwest Zones.⁴¹

202 (sub-ground 5.2.v), 215 (sub-ground 5.2.vi).

²⁹ Case 004/2-**D359/24** & **D360/33** PTC Closing Order Considerations, para. 76. *See also* para. 77; Case 004/1-**D308/3/1/20** PTC Closing Order Considerations, paras 44, 47, 51; **D370/1/1/6** PTC Decision on Annulment Request, para. 17.

³⁰ Case 004/2-**D359/24** & **D360/33** PTC Closing Order Considerations, para. 76. *See also* para. 77; Case 004/1-**D308/3/1/20** PTC Closing Order Considerations, paras 44, 47, 51; **D370/1/1/6** PTC Decision on Annulment Request, para. 17.

³¹ Case 004/1-**D308/3/1/20** PTC Closing Order Considerations, para. 51.

³² **D382/22** Yim Tith Appeal, para. 19.

³³ Case 004/1-**D308/3/1/20** PTC Closing Order Considerations, para. 44; Case 002-**F36** Case 002/01 AJ, para. 49.

³⁴ *See* Case 004/1-**D308/3/1/20** PTC Closing Order Considerations, paras 51-52; Case 002-**F36** Case 002/01 AJ, para. 424. *See also* Taylor AJ, para. 75.

³⁵ **D382/22** Yim Tith Appeal, para. 150 (sub-ground 5.2.i).

³⁶ **D382/22** Yim Tith Appeal, paras 136 (sub-ground 5.1), 158 (sub-ground 5.2.ii), 165-166, 171, 176, 179, 182 (sub-ground 5.2.iii), 195 (sub-ground 5.2.iv), 198 (sub-ground 5.2.v), 223-224, 228 (sub-ground 5.3.i), 260 (sub-ground 5.3.iii).

³⁷ **D382/22** Yim Tith Appeal, paras 157-158 (sub-ground 5.2.ii), 166-167 (sub-ground 5.2.iii), 205 (sub-ground 5.2.iv), 238 (sub-ground 5.3.i), 255 (sub-ground 5.3.iii). In any event, the ICIJ expressly adopted a cautious approach to hearsay and uncorroborated evidence, *see* **D382** Indictment, paras 122-124.

³⁸ Case 002-**F36** Case 002/01 AJ, paras 207, 304; Case 002-**D353/2/3** PTC Decision on Investigative Action, para. 30.

³⁹ Case 002-**F36** Case 002/01 AJ, para. 352.

⁴⁰ Case 002-**F36** Case 002/01 AJ, para. 352.

⁴¹ **D382/22** Yim Tith Appeal, paras 160-161 (sub-ground 5.2.ii), 217 (sub-ground 5.2). Yim Tith makes a similar argument for the purpose of his likely significant contribution to JCE A. *See* para. 234 (sub-ground 5.3.i).

Similarly, Annex A of Yim Tith's Appeal, in which he quotes *parts* of statements of witnesses he claims had never heard of him, does not undermine – nor is it clearly relevant to – the specific accounts of all those who did know of Yim Tith and gave evidence about his acts and conduct.⁴² Yim Tith ignores the prevailing secrecy under the Communist Party of Kampuchea (“CPK”) that prevented witnesses from hearing details about authority figures and the risk to an individual's life if questions about authority were asked.⁴³ Additionally, Yim Tith's sub-grounds 5.2.iii, 5.2.v, 5.2.vi, and 5.3⁴⁴ fail to rebut the presumption by merely arguing that the ICIJ failed to account for certain pieces of evidence.⁴⁵

17. Standard of review for a discretionary decision: The party seeking to reverse a discretionary decision *must demonstrate* that it was: (i) based on an error of law invalidating the decision, (ii) based on an error of fact occasioning a miscarriage of justice; or (iii) was so unfair or unreasonable as to constitute an abuse of discretion and force the conclusion that the CIJs failed to exercise their discretion judiciously.⁴⁶ In other words, it must be established that there was an error or abuse which was fundamentally determinative of the CIJs' exercise of discretion.⁴⁷ Hereafter, all references in this brief to a reviewable error of law or fact or abuse of discretion encompasses these standards.
18. Yim Tith argues that the ICIJ erred in law, fact, and abused his discretion in finding Yim Tith “most responsible” for the crimes of the DK era.⁴⁸ To the extent that Yim Tith alleges throughout his appeal that the ICIJ abused his discretion, the ICP understands this to relate to personal jurisdiction. However, where a CIJ considers there to be sufficient evidence for a charged person to fall within the personal jurisdiction of the ECCC, there is no discretion whether to indict.⁴⁹

⁴² *Contra* **D382/22** Yim Tith Appeal, paras 160-161 (sub-ground 5.2.ii), 217 (sub-ground 5.2.vi), 234 (sub-ground 5.3.i); **D382/22.2** Annex A.

⁴³ Case 001-**E188** Duch TJ, paras 97-98; Case 002-**E313** Case 002/01 TJ, paras 199, 250, 641, 726, 731, 737; Case 002-**E465** Case 002/02 TJ, paras 342, 398, 459, 3927, 3938-3939; Case 002-**F36** Case 002/01 AJ, para. 1068. *See e.g.* **D118/293** Sou Lorn WRI, A62-63; **D219/294** Muol Eng WRI, A204.

⁴⁴ **D382/22** Yim Tith Appeal, paras 165, 174-175, 184-185, 187 (sub-ground 5.2.iii), 199-200, 202 (sub-ground 5.2.v), 206, 209-212, 218 (sub-ground 5.2.vi), paras 223, 227, 228 (sub-ground 5.3).

⁴⁵ Case 002-**F36** Case 002/01 AJ, para. 357.

⁴⁶ *See* Case 004/2-**D359/24** & **D360/33** PTC Closing Order Considerations, para. 29; Case 004/1-**D308/3/1/20** PTC Closing Order Considerations, para. 21.

⁴⁷ *See* Case 004/2-**D359/24** & **D360/33** PTC Closing Order Considerations, para. 29; Case 004/1-**D308/3/1/20** PTC Closing Order Considerations, para. 21.

⁴⁸ **D382/22** Yim Tith Appeal, paras 1, 267.

⁴⁹ Case 001-**D99/3/42** PTC Closing Order Decision, para. 37.

19. Yim Tith repeatedly fails to articulate the proper standard of review for his grounds of appeal. Yim Tith's argument in sub-ground 1.2.i.b., that the Case 004 investigation was contaminated, concludes by stating that the case should be dismissed to prevent a miscarriage of justice⁵⁰ – the standard of review for an error of fact. However, his introduction to sub-ground 1.2 characterises the alleged errors in the section as an abuse of discretion,⁵¹ while the title of ground 1 alleges an error of law.⁵² Moreover, Yim Tith states in the conclusion for ground 1 that “the PTC must reverse the ICIJ's serious error of law in issuing an indictment [...] therefore dismissing Case 004 in order to prevent a serious miscarriage of justice”.⁵³
20. Likewise, Yim Tith's ground 4 is characterised as an error of law at the outset,⁵⁴ but his conclusion to the ground refers to the standard of review for an error of fact and alleges an abuse of discretion.⁵⁵ And Yim Tith's ground 5 alleges errors of fact and law at the outset while introducing an alleged abuse of discretion in sub-ground 5.2.iii.⁵⁶
21. As well as conflating the standards of review, Yim Tith misapplies the applicable test for determining an abuse of discretion, wrongly alleging that errors of law in sub-grounds 2.3 and ground 3 as well as errors of fact in sub-ground 5.1, 5.2.iii, 5.2.iv, 5.3.i, and 5.3.iii amount to an “abuse of discretion”.⁵⁷ However alleged errors of law or fact are adjudged by the standard of whether there was a failure to exercise discretion judiciously, while “abuse of discretion” applies to factors other than legal or factual errors that are “so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion”.⁵⁸ Additionally, Yim Tith fails to demonstrate that any of his arguments meet even the erroneous test that he seeks to apply, let alone the correct standard. His grounds 2 and 4 and sub-grounds 1.2, 5.2, and 5.3 merely assert that the ICIJ abused his discretion without demonstrating how or substantiating the claim in any way.⁵⁹ These arguments should be

⁵⁰ **D382/22** Yim Tith Appeal, para. 35.

⁵¹ **D382/22** Yim Tith Appeal, para. 26.

⁵² **D382/22** Yim Tith Appeal, EN 01631859.

⁵³ **D382/22** Yim Tith Appeal, para. 55.

⁵⁴ **D382/22** Yim Tith Appeal, EN 01631893.

⁵⁵ **D382/22** Yim Tith Appeal, para. 120.

⁵⁶ **D382/22** Yim Tith Appeal, EN 01631899, 907, para. 175.

⁵⁷ **D382/22** Yim Tith Appeal, paras 81 (sub-ground 2.3), 99, 102-103 (ground 3), 126 (sub-ground 5.1), 175 (5.2.iii), 190, 193, 197 (sub-ground 5.2.iv), 240-241 (sub-ground 5.3.i), 254, 258, 264 (sub-ground 5.3.iii).

⁵⁸ See Case 004/2-**D359/24** & **D360/33** PTC Closing Order Considerations, para. 29; Case 004/1-**D308/3/1/20** PTC Closing Order Considerations, para. 21.

⁵⁹ **D382/22** Yim Tith Appeal, paras 26 (sub-ground 1.2), 62 (sub-ground 2.1), 79 (sub-ground 2.2), 94 (sub-ground 2.3), 120 (ground 4), 220 (sub-ground 5.2), 226, 231, 240, 241 (sub-ground 5.3.i), 250 (sub-ground 5.3.ii), 254, 258, 264 (sub-ground 5.3.iii), 267 (overall conclusion of the appeal).

summarily dismissed as a result.

22. Yim Tith's misuse of appellate standards should not be permitted to allow an improper broadening of the scope of his claims. Yim Tith's repeated failure to identify the correct standard of review results in a failure to demonstrate that he has satisfied the appellate standard that he alleges.

III. SUBMISSIONS

A. GROUND 1: YIM TITH FAILS TO DEMONSTRATE ANY REVIEWABLE ERROR REGARDING THE CASE 004 INVESTIGATION AND ISSUANCE OF THE INDICTMENT

23. If found admissible,⁶⁰ Yim Tith fails to demonstrate any reviewable error of law or abuse of discretion in the ICIJ's conduct of the Case 004 investigation and decision to issue an Indictment based on Yim Tith's claim that his fundamental fair trial rights were violated. Contrary to Yim Tith's claim, the ICIJ considered these arguments and, therefore, did not violate Yim Tith's right to be heard.⁶¹ Moreover, Yim Tith's unmerited request for Case 004 to be dismissed is unreasonable and disproportionate to any harm he may have suffered.⁶²

1. Yim Tith fails to demonstrate any reviewable error based on the 3IS

24. Yim Tith fails to demonstrate a reviewable error of law in the initiation of the Case 004 investigation through the filing of the 3IS.⁶³
25. First, Yim Tith's claim is untimely and unfounded. He could have sought annulment of any part of the proceedings during the investigation on the basis of his current claim. He chose not to, instead waiting until after the conclusion of the investigation to first raise the issue.⁶⁴ Moreover, Yim Tith's annulment requests during the investigation demonstrate his acceptance of the validity of the 3IS and the resulting Case 004 investigation.⁶⁵

⁶⁰ See Preliminary Submissions, paras 4-5 (inadmissibility).

⁶¹ **D382/22** Yim Tith Appeal, para. 20; **D382** Indictment, para. 24.

⁶² See **D382/22** Yim Tith Appeal, paras 20, 55.

⁶³ **D382/22** Yim Tith Appeal, paras 21-24 (sub-ground 1.1).

⁶⁴ **D378/5** Yim Tith's Combined Response to the National and International Co-Prosecutors' Final Submissions, 26 Nov. 2018 ("Yim Tith Response to Final Submissions") paras 248-258.

⁶⁵ See e.g. **D370** Yim Tith's Application to Seize the Pre-Trial Chamber With a View to Annulment of the Requests for and Use of Civil Parties Supplementary Information From Civil Parties and Associated Practices in Case 004, 12 Sept. 2017; **D360/1/1/2** Yim Tith's Application to Annul the Placement of Case 002 Oral Testimonies Onto Case File 004, 30 June 2017; **D351/1/2** Yim Tith's Application to Annul the Investigative Material Produced by Paolo Stocchi, 27 Apr. 2017.

26. Second, the PTC considered the Co-Prosecutors' Rule 71(1)(2) disagreement regarding proceeding with Case 004⁶⁶ and was unable to reach the requisite majority.⁶⁷ The default outcome pursuant to Rule 71(4)(c) was that the 3IS went forward for investigation and properly seised the CIJs.⁶⁸
27. Third, the course of the Case 004 investigation defeats Yim Tith's arguments, as it repeatedly demonstrated the 3IS's validity.⁶⁹ The PTC in Case 004/2 recently addressed the propriety of two closings orders and their respective merits in that case.⁷⁰ Had the 3IS and the resulting investigation been invalid, there would have been no need for the PTC to have considered such matters. Likewise, in Case 004/1, the CIJs issued a joint decision on the merits of the investigation and the PTC issued its considerations on the appeal of those merits without finding the 3IS or the Case 004 investigation invalid.⁷¹

2. Yim Tith fails to demonstrate any interference with the administration of justice

28. Yim Tith fails to demonstrate that the ICIJ abused his discretion by issuing the Indictment in light of the leak of the 3IS.⁷² Though the leak was regrettable, Yim Tith does not establish that the public release of general allegations regarding an individual's possible criminal responsibility violates the presumption of innocence or negates an investigation.
29. The presumption of innocence protects against premature declarations of guilt. The PTC has emphasised that the pre-trial stage "does not involve any determination of guilt or innocence" and that the "presumption of innocence is sufficiently safeguarded as, pursuant to Internal Rule 98(4), a *conviction* at trial requires the affirmative vote of at least four judges, and without the required majority, 'the default decision shall be that the Accused is acquitted.'"⁷³ Were Yim Tith's flawed rationale accepted, any public inquiry, fact-finding mission, or truth and reconciliation commission that named potential wrongdoers would prevent a subsequent criminal investigation.

⁶⁶ *Contra* D382/22 Yim Tith Appeal, para. 23.

⁶⁷ D1/1.3 PTC Considerations on Rule 71 Disagreement.

⁶⁸ Yim Tith wrongly claims that the 3IS is procedurally void because it is signed by the Acting Prosecutor, D382/22 Yim Tith Appeal, para. 24. However, *see* D1 Co-Prosecutors' Third Introductory Submission, 20 Nov. 2008 ("Third Introductory Submission"), EN 00292472.

⁶⁹ Case 004/2-D360 Indictment, paras 41-42.

⁷⁰ Case 004/2-D359/24 & D360/33 PTC Closing Order Considerations, paras 88-124.

⁷¹ Case 004/1-D308/3 Closing Order; Case 004/1-D308/3/1/20 PTC Closing Order Considerations.

⁷² *Contra* D382/22 Yim Tith Appeal, paras 27-29 (sub-ground 1.2.i.a).

⁷³ Case 004/2-D359/24 & D360/33 PTC Closing Order Considerations, para. 163 (original emphasis). *See also* Case 002-E176/2/1/4 SCC Decision on Rule 35 Appeal, para. 52.

30. Yim Tith's arguments are also contrary to the Internal Rules which provide for keeping the public informed during an investigation.⁷⁴ Yim Tith acknowledged this fact in 2016, when stating that "[t]he only information currently available regarding Mr Yim Tith in the public domain is a short description on the website of the ECCC setting out his name, the alleged crimes, and the location of the alleged crime sites".⁷⁵ That Yim Tith made no reference in 2016 to the leak of the 3IS further demonstrates the baseless and untimely nature of his current argument.
31. Additionally, Yim Tith's claim is rebutted by ECCC practice. For example, the Court publishes details of allegations being investigated to enable victims to apply to become civil parties.⁷⁶ Further, during the Case 004 investigation, witnesses gave sworn public testimony in Case 002/02 about Yim Tith's relationship with Ta Mok, Yim Tith's position on the Sector 13 Committee and orders given in that capacity, as well as his involvement in forced marriages.⁷⁷ The PTC held that references to a Case 004 suspect's "name, functions or role in Case 002 is inevitable, due to overlapping facts and evidence, and [...] does not constitute a breach of fairness or reversal of the burden of proof".⁷⁸
32. Yim Tith fails to cite a single statement to support his speculative allegation of witness contamination from the 3IS leak.⁷⁹ Had Yim Tith considered any Written Record of Interview ("WRI") to be so affected, he could have sought annulment pursuant to Rule 76 during the investigation. Instead, Yim Tith annexes a list of people interviewed by the CIJs that had allegedly never heard of him.⁸⁰ Yim Tith's claim of a lack of investigative integrity in Case 004⁸¹ is therefore seemingly confined to the witness statements with which he disagrees.

3. Yim Tith fails to demonstrate any "contamination" of the Case 004 investigation

33. Yim Tith's unsubstantiated claim that DC-Cam conducted judicial investigations in Case

⁷⁴ See e.g. Internal Rules 54, 56.

⁷⁵ **D193/76** Yim Tith's Request for Reconsideration of the Decision on International Co-Prosecutor's Request to Disclose One Case 004 Document to Case 002 (D193/69), 19 May 2016 ("Yim Tith Request for Disclosure Reconsideration"), para. 23.

⁷⁶ See e.g. ECCC November 2009 Press Release; ECCC August 2011 Press Release.

⁷⁷ See Case 002-**E465** Case 002/02 TJ, fn. 2766 (Yim Tith being the Sector 13 Secretary); fn. 3737 (Orders to the District after visits by Yim Tith); fn. 12226 (Yim Tith's involvement in forced marriages).

⁷⁸ Case 004/2-**D284/1/4** PTC Disclosure Decision, para. 24.

⁷⁹ **D382/22** Yim Tith Appeal, para. 29.

⁸⁰ **D382/22** Yim Tith Appeal, Annex A.

⁸¹ **D382/22** Yim Tith Appeal, para. 29.

- 004⁸² fails to demonstrate any error of law or fact or abuse in the ICIJ's issuance of the Indictment.
34. Yim Tith cites no evidence supporting his speculative allegation that DC-Cam used leaked material as a basis for its interviews. Contrarily, Yim Tith acknowledges that when DC-Cam was uncovering evidence about him in 2010, "the name 'Tith' was [...] not mentioned in any press releases or public statements either in connection with the Case 002 judicial investigation or in the context of the ICP's Third Introductory Submission".⁸³ The DC-Cam document that Yim Tith cites actually states that "[a]ccording to Ben Kiernan's interview and confirmed by informants from Kirivong, District 109 was controlled by a district secretary named Tith, who was Ta Mok's brother-in-law."⁸⁴ This was subsequently reiterated by individuals that DC-Cam spoke to,⁸⁵ underlining Yim Tith's authority in Kirivong District.
35. The ICIJ properly used DC-Cam interviews as an investigative lead. The PTC has emphasised the CIJs' wide discretion⁸⁶ in how to conduct interviews and held that putting evidence from the case file to an interviewee was not only a "legitimate investigative practice", but "amounts to an exculpatory practice, since it objectively results in challenging the inculpatory evidence on the record".⁸⁷ Yim Tith disregards this jurisprudence when misrepresenting the actions of an ICIJ investigator,⁸⁸ who was simply doing what the PTC considered as appropriate investigative action.
36. Additionally, Yim Tith's example of a WRI showing a "rotten feedback loop" of the ICIJ relying heavily on the work of DC-Cam contains nothing to suggest that the individual ever spoke with DC-Cam.⁸⁹ Similarly, Yim Tith errs when relying on a witness statement as an "example" of the ICIJ being aware that DC-Cam disclosed confidential information regarding an ongoing ECCC investigation.⁹⁰ The impugned DC-Cam interview was with

⁸² *Contra* **D382/22** Yim Tith Appeal, paras 30-35 (sub-ground 1.2.i.b).

⁸³ **D382/22** Yim Tith Appeal, para. 32.

⁸⁴ **D65.1.2** DC-Cam: Project to Promote Accountability, EN 00680842, *cited in* **D382/22** Yim Tith Appeal, para 32.

⁸⁵ **D65.1.2** DC-Cam: Project to Promote Accountability, EN 00680859, 62, 74.

⁸⁶ **D351/1/4** Decision on Investigative Material Annulment, para. 38

⁸⁷ Case 004/2-**D338/1/5** Decision on WRI Annulments, para. 21.

⁸⁸ **D382/22** Yim Tith Appeal, para 34.

⁸⁹ **D382/22** Yim Tith Appeal, para 30. *See* **D3/8** Tun Soun WRI, A4. Mr Tun states that he spoke with a group comprised of an Indian, an American, and a Japanese person. Yim Tith is seemingly assuming, without foundation, that this group was DC-Cam.

⁹⁰ **D382/22** Yim Tith Appeal, para. 34.

the wife of Case 003 suspect Sou Met, who was questioned about the ECCC's proceedings months after a Case 003 defence lawyer had publicly confirmed that the suspect Sou Met had died.⁹¹

37. Yim Tith's previous submissions further contradict his claim. For example, Yim Tith requested in 2014 that he be allowed to conduct his own investigations and suggested that the CIJs could "follow [...] the same procedure it used when adopting DC-Cam's investigation on to the Case File in other ECCC cases".⁹² In 2016, Yim Tith submitted a comparison between the DC-Cam interview of Moeng Vet and his subsequent OCIJ interview, declaring "very little overlap between the content of the two documents".⁹³ Yim Tith also relied, in his response to final submissions, on DC-Cam interviews which he claimed showed that evidence provided to DC-Cam was inconsistent with subsequent statements to the CIJs.⁹⁴ Clearly, Yim Tith's current complaint relates only to witness statements with which he disagrees.⁹⁵
38. Finally, the untimeliness of Yim Tith's complaint further demonstrates its lack of merit. Had he considered any WRIs which relied on original DC-Cam interviews to be "contaminated", he could have sought annulment pursuant to Rule 76 during the investigation.

4. Yim Tith fails to provide a legitimate basis for reconsideration of his complaint regarding "late" access to the Case 004 file

39. Yim Tith fails to provide a legitimate basis for why the PTC should exceptionally reconsider his claim regarding "late" access to the Case 004 file.⁹⁶ Yim Tith does not demonstrate any "compelling reasons, including any change in circumstances" that warrant reconsideration.⁹⁷ The PTC has already held that Yim Tith receiving access to

⁹¹ **D219/903.1** Ma Sivorn DC-Cam Statement, EN 01527548; Cambodia Daily Article ("Michael Karnavas, the former defense lawyer for late Case 002 defendant Ieng Sary and lawyer for Case 003 suspect Meas Muth, said: 'Sou Met's passing away would not necessarily impact [on] the remainder of Case 003.'").

⁹² **D203** Yim Tith's Request for Clarification That He Can Conduct His Own Investigation, 3 June 2014, para. 21.

⁹³ **D193/76** Yim Tith Request for Disclosure Reconsideration, para. 28. Yim Tith filed an annex listing the differences in content between the statements, *see* **D193/76.1.1** Annex A.

⁹⁴ *See e.g.* **D378/5** Yim Tith Response to Final Submissions, paras 798, 972, 1234.

⁹⁵ **D382/22** Yim Tith Appeal, para 33.

⁹⁶ Case 004/2-**D359/24** & **D360/33** PTC Closing Order Considerations, para.164. *Contra* **D382/22** Yim Tith Appeal, para. 36 (sub-ground 1.2.i.c).

⁹⁷ Case 002-**F2/10/3** SCC Reconsideration Decision, EN 01202790. *See also e.g.* Case 002-**D193/71.1.3** PTC Reconsideration Decision, para. 25; Case 002-**D364/1/6** PTC Reconsideration Decision on CPA Admissibility, para. 6; **D193/89** Consolidated Decision on *Yim Tith* Reconsideration Request, para. 62.

the case file when he was formally charged did not cause irreparable damage to his fair trial rights or the fairness of the Case 004 proceedings.⁹⁸

5. Yim Tith fails to demonstrate any reviewable error regarding the duration of Case 004 proceedings

40. Yim Tith fails to demonstrate any reviewable error of law or fact in the ICIJ's issuance of the Indictment at the end of the Case 004 investigation.⁹⁹
41. Yim Tith misrepresents the duration of Case 004. Contrary to his assertion,¹⁰⁰ "[t]he starting point [for assessing the reasonable duration of a case] is when the suspect was officially notified that he would be prosecuted even if he was not formally charged until later".¹⁰¹ In Case 004 this was 24 February 2012, not 10 July 2006 as Yim Tith claims.¹⁰²
42. Yim Tith's reliance on European Court of Human Rights jurisprudence is misplaced.¹⁰³ He relies on non-analogous case law and overlooks cases concerning international crimes, which have been assessed differently due to their complexity.¹⁰⁴ This is surprising given that Yim Tith has previously said that he "faces the most complex legal and factual matrices of any case tried before the ECCC" and provided statistical analyses of the volume of evidence and the nature and number of charges against him to conclude that "the magnitude of the evidentiary material on Case File 004 is nothing short of titanic."¹⁰⁵
43. Yim Tith's claim that the duration of the Case 004 investigation has been unduly delayed is also at odds with his position in June 2017, two months before the conclusion of the investigation, when he argued that the Case 004 investigation must not be completed

⁹⁸ **D361/4/1/10** PTC Decision on Adequate Time, paras 30, 35. *See also* **D192/1** Decision on *Yim Tith* Request, para. 10.

⁹⁹ *See* Preliminary Submissions, paras 4-5 (inadmissibility) 17, 19, 22 (standard of review). *Contra* **D382/22** *Yim Tith* Appeal, paras 37-53 (sub-ground 1.2.ii).

¹⁰⁰ Yim Tith misapplies case law that he relies on to claim that the starting point for assessing the reasonable duration of Case 004 was when a preliminary investigation against unknown persons was opened a few months after the ECCC commenced. *See* **D382/22** *Yim Tith* Appeal, fn. 94; **D378/5** *Yim Tith* Response to Final Submissions, paras 14-15. *Contra* **D382/22** *Yim Tith* Appeal, para. 42.

¹⁰¹ Case 003-**D120/3/1/8** International PTC Judges' Opinion on Supplementary Submission Motion, para. 35, fn. 134 (*citing* *Eckle v. Germany*, para. 73).

¹⁰² **D109** Notification of Suspect's Rights. *See also* **D186/1** Notification on *Yim Tith* Case File Access, paras 1, 5; *Hozee v. Netherlands*, paras 45-46. *Contra* **D382/22** *Yim Tith* Appeal, paras 40, 42.

¹⁰³ *See e.g.* **D382/22** *Yim Tith* Appeal, fn. 100.

¹⁰⁴ *See e.g.* *X v. FRG*, pp. 115-116; *Korbely v. Hungary*, para. 104; *Kononov v. Latvia*, p. 40; *Larionovs v. Latvia*, para. 190.

¹⁰⁵ **D355/4** *Yim Tith's* Submissions on the Budgetary Situation of the ECCC and Its Impact on Case 004, 5 June 2017 ("*Yim Tith* ECCC Budget and Impact Submission"), paras 38, 37. *See also* paras 35-36, 39-46; **D312** *Yim Tith's* Urgent Request for the Co-Investigating Judges to Direct the Defence Support Section to Provide the *Yim Tith* Defence Team With the Resources It Was Originally Allocated, 1 June 2016, paras 29, 31, 38.

prematurely.¹⁰⁶

44. Moreover, Yim Tith makes speculative arguments on the potential duration of trial and appellate proceedings, the possible deterioration of evidence, and the ECCC's uncertain budgetary situation.¹⁰⁷ His prospective claims are irrelevant to the question of the duration of the proceedings to date, while the PTC has dismissed the question of financial uncertainty in Case 004/2 by holding that "the right of the Accused to procedural fairness at the present stage is not at risk to be irremediably infringed."¹⁰⁸

B. GROUND 2: YIM TITH FAILS TO DEMONSTRATE ANY REVIEWABLE ERROR IN THE ICIJ'S REASONING IN THE INDICTMENT

45. If deemed admissible,¹⁰⁹ Yim Tith fails to demonstrate a reviewable error of law in the sufficiency of the ICIJ's findings.¹¹⁰ Contrary to Yim Tith's claim,¹¹¹ the Indictment sets out the requisite elements in accordance with Internal Rule 67(2).
46. The PTC has held that an indictment sets out sufficient particulars "when [they] concisely [set] out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the nature and cause of the charges against him/her to enable him/her to prepare a defence".¹¹² In making this determination, "the Closing Order must be examined holistically when determining the charges and the supporting material facts".¹¹³

1. Yim Tith fails to demonstrate any reviewable error in the form or substance of the "most responsible" section of the Indictment

47. Yim Tith erroneously claims that the ICIJ failed to set out the relevant considerations and underlying facts needed to inform Yim Tith of the basis for assessing that he was among those "most responsible".¹¹⁴ In fact, the ICIJ relied on considerations endorsed by the PTC for the assessment of personal jurisdiction,¹¹⁵ including: (i) number of victims, (ii) nature of the incidents, (iii) impact on the victims, (iv) level of Yim Tith's participation,

¹⁰⁶ D355/4 Yim Tith ECCC Budget and Impact Submission, para. 33.

¹⁰⁷ *Contra* D382/22 Yim Tith Appeal, paras 40, 42, 51-53.

¹⁰⁸ Case 004/2-D359/24 & D360/33 PTC Closing Order Considerations, para. 167.

¹⁰⁹ See Preliminary Submissions, paras 4, 6 (inadmissibility).

¹¹⁰ D382/22 Yim Tith Appeal, paras 56-58.

¹¹¹ D382/22 Yim Tith Appeal, paras 56-94.

¹¹² Case 002-D97/15/9 PTC JCE Decision, para. 32. See also Case 002-E122 TC Decision on Preliminary Objections, para. 19.

¹¹³ Case 002-E465 Case 002/02 TJ, para. 173; Case 002-E100/6 TC Decision on JCE Applicability, para. 21; Case 002-D404/2/4 PTC Decision on CPA Admissibility Appeals, paras 80-81.

¹¹⁴ D382/22 Yim Tith Appeal, paras 59, 61.

¹¹⁵ Case 004/2-D359/24 & D360/33 PTC Closing Order Considerations, paras 140-141.

- (v) Yim Tith's official rank, and (vi) Yim Tith's *de facto* roles and responsibilities.¹¹⁶
48. Yim Tith wrongly asserts that the ICIJ erred in law by not setting out an exhaustive list of the criteria on which he would rely for the assessment of those to be considered "most responsible".¹¹⁷ Yim Tith fails to demonstrate that there is applicable law as such, in terms of criteria to be considered for assessing personal jurisdiction. On the contrary, the assessment must be "based entirely on the merit of each case".¹¹⁸
49. Yim Tith also mischaracterises the ICIJ incorporating by reference law relating to personal jurisdiction.¹¹⁹ The content of the incorporation does not relate to the considerations to be taken into account when assessing whether an individual is among those "most responsible".¹²⁰ There is consequently no basis for Yim Tith's claim that the Indictment does not provide sufficient notice of the case against him.¹²¹

2. Yim Tith fails to demonstrate any reviewable error in the form or substance of the ICIJ's approach to the crime of genocide

50. Yim Tith fails to demonstrate that the ICIJ did not set out the legal elements of the crime of genocide or the factual basis of the findings regarding the Khmer Krom as a group and Yim Tith's *mens rea*.¹²²
- a. Yim Tith fails to demonstrate any reviewable error in the ICIJ's findings relating to the Khmer Krom as a group
51. Yim Tith erroneously asserts that the ICIJ did not find that the Khmer Krom were an identifiable group for the purposes of the crime of genocide.¹²³ In fact, the ICIJ identified the Khmer Krom as a group based on their ethnicity, race, and nationality.¹²⁴ The ICIJ referred to the group's particular characteristics, *e.g.* their distinct accent, fair complexion, culture, and origins.¹²⁵ The identifiable nature of the group is also

¹¹⁶ **D382** Indictment, paras 997 (number of victims), 997 (nature of the incidents), 998 (impact on victims), 996 (level of participation), 993 (official rank), 994 (*de facto* roles and responsibilities). *See also* paras 992-999.

¹¹⁷ **D382/22** Yim Tith Appeal, paras 59-60.

¹¹⁸ Case 004/1-**D261** Closing Order, para. 37; Case 004/1-**D308/3/1/20** International PTC Judges' Opinion on Closing Order, para. 321; Case 004/2-**D359/24** & **D360/33** International PTC Judges' Opinion on Closing Order, para. 352.

¹¹⁹ **D382/22** Yim Tith Appeal, para. 60.

¹²⁰ *Contra* **D382/22** Yim Tith Appeal, para. 60.

¹²¹ **D382/22** Yim Tith Appeal, para. 60.

¹²² **D382/22** Yim Tith Appeal, para. 64.

¹²³ **D382/22** Yim Tith Appeal, paras 69-71.

¹²⁴ **D382** Indictment, paras 1008 (ethnicity), 196 (race), 186-187, 189-191 (nationality).

¹²⁵ **D382** Indictment, paras 187, 196, 264, 267, 312, 769, 792, 901 (accent), 267, 741, 909 (complexion); 186-

demonstrated in the ICIJ's findings on how the CPK searched for and singled out the Khmer Krom.¹²⁶

52. Yim Tith also erroneously asserts that the ICIJ did not show the relevance of the link between the targeting of the Khmer Krom and the Vietnamese.¹²⁷ This ignores the ICIJ's findings (i) regarding the similar characteristics between the Khmer Krom and Vietnamese,¹²⁸ (ii) that the CPK considered the Khmer Krom "to be Vietnamese or at least to be a distinct group that was racially similar or otherwise closely connected to the Vietnamese",¹²⁹ and (iii) that, consequently, the Khmer Krom "were subject to the CPK's anti-Vietnamese policies."¹³⁰

b. Yim Tith fails to demonstrate any reviewable error in the ICIJ's findings regarding Yim Tith's specific intent

53. Yim Tith mischaracterises the ICIJ's findings when claiming that the ICIJ failed to distinguish the discriminatory intent necessary for the crime of persecution from the specific intent required for genocide.¹³¹ Firstly, the ICIJ correctly set out the applicable *mens rea* of genocide "as a specific intent to destroy, in whole or in part, the relevant protected group".¹³² Subsequently, based on the factual findings of Yim Tith's acts and conduct, the ICIJ concluded "Yim Tith shared the special intent to destroy the Khmer Krom [as a group] through the underlying acts of killing members of the Khmer Krom population."¹³³
54. Further, Yim Tith erroneously claims that the ICIJ failed to set out the material facts underpinning Yim Tith's intent or specify which findings related to Yim Tith as opposed to the CPK.¹³⁴ In fact, the ICIJ found that Yim Tith was particularly vocal about his hatred

187, 187-188 (culture), 266-267 (origins).

¹²⁶ **D382** Indictment, paras 214, 267, 539.

¹²⁷ **D382/22** Yim Tith Appeal, para. 71.

¹²⁸ **D382** Indictment, paras 187, 196, 264, 267, 769, 792, 901, 909. The Dismissal Order made similar findings, *see* **D381** Dismissal Order, paras 219-220, 235, 405.

¹²⁹ **D382** Indictment, para. 196.

¹³⁰ **D382** Indictment, para. 198. The Dismissal Order made similar findings, *see* **D381** Dismissal Order, paras 135, 153, 328-329, 342, 358.

¹³¹ **D382/22** Yim Tith Appeal, paras 72-73. Yim Tith misleadingly omits the word "specific" from the ICIJ's finding that Yim Tith had "the specific discriminatory intent for genocide and persecution", *see* **D382** Indictment, para. 1040.

¹³² **D382** Indictment, para. 68.

¹³³ **D382** Indictment, para. 1023.

¹³⁴ **D382/22** Yim Tith Appeal, para. 76.

of Khmer Krom and his desire to destroy them,¹³⁵ that Yim Tith chaired various meetings attended by military personnel and civilians in the Southwest and Northwest Zones where he indicated that the Khmer Krom,¹³⁶ the “Yuon Khmer”,¹³⁷ and the “Yuon”¹³⁸ were enemies and constituted a threat to DK;¹³⁹ and that Yim Tith instructed “all sectors of society, including subordinate CPK cadres to monitor and report anyone suspected of such links so they could be killed.”¹⁴⁰ The ICIJ concluded, based on these and various other findings, that Yim Tith was likely an orchestrator of the genocide of the Khmer Krom.¹⁴¹

3. Yim Tith fails to demonstrate any reviewable error in the form or substance of the ICIJ’s approach to superior responsibility

55. Yim Tith erroneously claims that the ICIJ did not correctly define the legal elements and set out the factual basis for the legal findings on superior responsibility.¹⁴² First, Yim Tith fails to demonstrate that proof of a causal link between a failure to prevent a subordinate’s crimes and the occurrence of those crimes was a necessary element of the mode of liability of superior responsibility in 1975.¹⁴³ ECCC jurisprudence requires no such element¹⁴⁴ and Yim Tith relies on sources that postdate the ECCC’s temporal period without demonstrating that these represent customary international law.¹⁴⁵ Additionally, Yim Tith’s argument focuses only on a superior’s duty to prevent crimes and disregards that superior responsibility can be imposed for acts or omissions occurring after the commission of crimes, namely when a superior fails to punish crimes committed by subordinates.¹⁴⁶
56. Second, Yim Tith fails to demonstrate that the ICIJ’s legal findings on his effective control are not supported by sufficient evidence.¹⁴⁷ As explained in detail in the response

¹³⁵ D382 Indictment, paras 387, 1011.

¹³⁶ D382 Indictment, para. 390.

¹³⁷ D382 Indictment, para. 390.

¹³⁸ D382 Indictment, paras 390, 394, 397.

¹³⁹ D382 Indictment, paras 388-397.

¹⁴⁰ D382 Indictment, para. 386.

¹⁴¹ D382 Indictment, para. 996.

¹⁴² D382/22 Yim Tith Appeal, para. 81.

¹⁴³ D382/22 Yim Tith Appeal, para. 92.

¹⁴⁴ Case 001-E188 *Duch* TJ, paras 538, 540-547; Case 002-E313 Case 002/01 TJ, paras 715-716; Case 002-E465 Case 002/02 TJ, paras 3725-3726.

¹⁴⁵ D382/22 Yim Tith Appeal, paras 89-90.

¹⁴⁶ See e.g. Case 002-E465 Case 002/02 TJ, para. 3726.

¹⁴⁷ D382/22 Yim Tith Appeal, para. 81.

to Ground 5,¹⁴⁸ Yim Tith fails to demonstrate any reviewable error in the ICIJ's findings that Yim Tith likely held *de jure* positions and *de facto* authority in the Southwest and Northwest Zones.

C. GROUND 3: YIM TITH FAILS TO DEMONSTRATE ANY REVIEWABLE ERROR IN THE SCOPE OF THE FACTS CONTAINED IN THE INDICTMENT

57. If found admissible,¹⁴⁹ Yim Tith's argument is based on a misunderstanding of the factual parameters of an investigation and fails to demonstrate any reviewable error of law or abuse in the ICIJ's issuance of the Indictment.¹⁵⁰ The ICP's reference to Yim Tith's position in Kirivong and description of the "purge" of Northwest Zone cadres in the 3IS did not temporally limit the factual scope of the Case 004 investigation into crimes in the Southwest and Northwest Zones.¹⁵¹
58. The "facts" of which the CIJs were seised to investigate relate to criminal conduct.¹⁵² This is clear from the PTC holding that the CIJs have a "duty to investigate all the facts alleged" in an introductory and any supplementary submission, and that "[t]he circumstances in which the alleged crime was committed and that contribute to the determination of its legal characterisation are not considered as being new facts and are thus part of the investigation".¹⁵³ The PTC also noted that when issuing a closing order, the CIJs "shall decide on all [...] the facts that were part of their investigation, either dismissing them for one of the reasons expressed in paragraph 3 of [Rule 67] or sending the Charged Person to trial on the basis of these acts".¹⁵⁴ Rule 67(3) provides for dismissal where the perpetrators have not been identified, there is insufficient evidence against the Charged Person, or the "acts in question *do not amount to crimes*".¹⁵⁵
59. The determinative question is thus whether the crimes alleged in the introductory or supplementary submissions were temporally limited. The crimes in the Southwest and Northwest Zones for which Yim Tith is indicted have no temporal limitation in the allegations with which the ICP seised the CIJs.¹⁵⁶ The ICIJ therefore properly indicted

¹⁴⁸ See paras 80-129 (sections III.E.2-7).

¹⁴⁹ See Preliminary Submissions, paras 4, 7 (inadmissibility).

¹⁵⁰ **D382/22** Yim Tith Appeal, paras 97-103.

¹⁵¹ *Contra* **D382/22** Yim Tith Appeal, paras 97-103.

¹⁵² *Contra* **D382/22** Yim Tith Appeal, paras 99-102.

¹⁵³ Case 001-**D99/3/42** PTC Closing Order Decision, para. 35.

¹⁵⁴ Case 001-**D99/3/42** PTC Closing Order Decision, para. 37.

¹⁵⁵ Emphasis added.

¹⁵⁶ See **D1** Third Introductory Submission, paras 60-81; **D196/1** Response to Forwarding Order D196, 23 June 2014, para. 2; **D65** Co-Prosecutors' Supplementary Submission Regarding Sector 1 Crime Sites and

Yim Tith for crimes committed in the Southwest Zone throughout the DK regime and for crimes in the Northwest Zone from at least early 1977 until 6 January 1979.¹⁵⁷

60. Yim Tith erroneously claims that the ICIJ “recognised the illegality of relying on the [...] facts” that Yim Tith alleges are outside the scope of the investigation.¹⁵⁸ Yim Tith cites to the section of the Indictment articulating the JCEs for which he is indicted,¹⁵⁹ improperly conflating “facts” with modes of liability. Moreover, the temporal scope of the three JCEs in the Indictment¹⁶⁰ is the same, if not narrower, than what was alleged in Yim Tith’s Written Record of Initial Appearance on 9 December 2015.¹⁶¹ Yim Tith could have challenged that he had been charged with facts outside the investigation in the years since. His decision to wait to raise this claim in his response to the final submissions,¹⁶² and now in his appeal, indicates its untimely and unfounded nature.

D. GROUND 4: YIM TITH FAILS TO DEMONSTRATE ANY REVIEWABLE ERROR IN THE ICIJ’S PURPORTED RELIANCE ON JCE

61. Yim Tith fails to demonstrate that the ICIJ relied on JCE in the assessment of personal jurisdiction and, even if the ICIJ did, that this was a reviewable error of law.¹⁶³ Yim Tith’s argument disregards ECCC jurisprudence and is based on a misunderstanding of the law as well as an inaccurate representation of the ICIJ’s findings.¹⁶⁴
62. First, Yim Tith fails to demonstrate that the ICIJ relied on JCE in assessing personal jurisdiction. Yim Tith merely suggests that the “ICIJ *appeared* to base his finding on Mr Yim Tith’s ‘very far’ geographical and hierarchical authority”.¹⁶⁵ Yim Tith is erroneously asserting that personal jurisdiction can only consider acts and conduct that are either geographically proximate or amount to physical perpetration. This is clearly rebutted by the law and practice of the ECCC.¹⁶⁶

Persecution of Khmer Krom, 18 July 2011 (“Supplementary Submission on Sector 1 and Khmer Krom”), paras 5-20; **D191** Co-Prosecutors’ Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence, 24 Apr. 2014, paras 2-10.

¹⁵⁷ *Contra* **D382/22** Yim Tith Appeal, paras 99-102.

¹⁵⁸ **D382/22** Yim Tith Appeal, paras 100, 102.

¹⁵⁹ **D382** Indictment, para. 1020, *cited in* **D382/22** Yim Tith Appeal, paras 100, 102.

¹⁶⁰ **D382** Indictment, para. 1016.

¹⁶¹ **D281** *Yim Tith* Initial Appearance, EN 01205500-01. The temporal scope of what the ICIJ describes as JCE A and JCE B in the Indictment are the same in the Initial Appearance document. The temporal scope of what the ICIJ describes as JCE C in the Indictment is narrower than in the Initial Appearance document.

¹⁶² **D378/5** Yim Tith Response to Final Submissions, paras 447-463.

¹⁶³ **D382/22** Yim Tith Appeal, paras 104-120.

¹⁶⁴ **D382/22** Yim Tith Appeal, paras 104-120.

¹⁶⁵ **D382/22** Yim Tith Appeal, fn. 254 (emphasis added). *See also* para. 104.

¹⁶⁶ Case 002-F36 Case 002/01 AJ, para. 816; Case 002-E313 Case 002/01 TJ, paras 691, 778, 804, 834; Case

63. Second, Yim Tith fails to demonstrate that in the event that the ICIJ relied on JCE to assess personal jurisdiction, this was an error. Yim Tith's argument is improperly challenging the applicability of JCE as a mode of liability at the ECCC, which has been long settled in the Court's jurisprudence.¹⁶⁷ Yim Tith selectively relies on the *Brđanin* appeal judgment,¹⁶⁸ while omitting that the ICTY Appeals Chamber in that case concluded that JCE "provides sufficient safeguards against overreaching or lapsing into guilt by association".¹⁶⁹ Yim Tith also erroneously suggests that JCE is the only mode of liability which does not involve an accused performing any part of the *actus reus* of the underlying crime.¹⁷⁰ Moreover, Yim Tith's assertion that the ICIJ departed from the approach to assessing personal jurisdiction used in Case 004/1¹⁷¹ is rebutted by the fact that the CIJs expressly relied on JCE liability when determining personal jurisdiction in that case.¹⁷²
64. Third, the ICIJ found Yim Tith to be among those "most responsible" due to the "major role [Yim Tith played] in all of the atrocities",¹⁷³ including his "orchestration of" the genocide of the Khmer Krom¹⁷⁴ and the fact that "civilians and former CPK cadres were victimised under and by Yim Tith in their tens of thousands",¹⁷⁵ including the "[m]en and women [that] were subjected by Yim Tith, and those he collaborated with, to the CPK's abhorrent social experiment of reducing the institution of marriage to a mere instrument in the propagation of the species".¹⁷⁶ Yim Tith improperly disregards that these conclusions in the personal jurisdiction assessment are supported by myriad factual findings on his involvement in the commission of crimes.¹⁷⁷

167 002-E100/6 TC Decision on JCE Applicability, para. 22; Case 001-E188 *Duch* TJ, paras 511-512; Case 002-D97/15/9 PTC JCE Decision, paras 72, 102.

168 Case 002-F36 Case 002/01 AJ, paras 767-810; Case 002-E313 Case 002/01 TJ, paras 691, 778, 804, 834; Case 002-E100/6 TC Decision on JCE Applicability, para. 22; Case 001-E188 *Duch* TJ, paras 511-512; Case 002-D97/15/9 PTC JCE Decision, paras 72, 102.

169 **D382/22** Yim Tith Appeal, paras 116-117.

170 *Brđanin* AJ, para. 426. *See also* para. 428.

171 *See e.g.* Case 002-E465 Case 002/02 TJ, paras 3717, 3719, 3725; Case 002-E313 Case 002/01 TJ, paras 715-716.

172 **D382/22** Yim Tith Appeal, paras 114-116.

173 Case 004/1-D308/3 Closing Order, paras 308-311, 313.

174 **D382** Indictment, para. 999.

175 **D382** Indictment, para. 996.

176 **D382** Indictment, para. 997.

177 **D382** Indictment, para. 998.

D382/22 Yim Tith Appeal, paras 108-120.

E. GROUND 5: YIM TITH FAILS TO DEMONSTRATE ANY REVIEWABLE ERROR IN THE CONCLUSION THAT HE WAS “MOST RESPONSIBLE” AND THUS WITHIN THE ECCC’S PERSONAL JURISDICTION

65. Yim Tith fails to demonstrate any reviewable error of law, error of fact, or abuse of discretion in the conclusion that Yim Tith was among those “most responsible” for the crimes committed during the DK regime.¹⁷⁸ Yim Tith’s selective and repeatedly inaccurate presentation of evidence does not undermine the findings on his likely *de facto* authority and *de jure* positions of authority in the Southwest and Northwest Zones, nor his likely significant contributions to the three separate JCEs to commit crimes across Cambodia throughout the DK regime. Further, Yim Tith disregards the jurisprudence on JCE liability by erroneously requiring a finding that he significantly contributed to each crime within the common plan, when the applicable law requires such contribution only to the *overall* common plan.¹⁷⁹ He repeats this error in his grounds relating to JCE A, JCE B, and JCE C.

1. Yim Tith fails to demonstrate that the finding that he likely had *de facto* authority and was among those “most responsible” was based only on his relationship with Ta Mok

66. The title to Yim Tith’s sub-ground of appeal 5.1 alleges non-specific errors in relation to his likely *de facto* authority in the Southwest and Northwest Zones as well as in the finding that he was likely “most responsible” – all based on his family ties to Ta Mok.¹⁸⁰ Yim Tith’s Appeal is unclear as to which of his submissions relate to these various challenges, but he cites exclusively to the section of the Indictment relating to his likely *de facto* authority in Sector 13 and the wider Southwest Zone. In any event, Yim Tith fails to demonstrate any reviewable error of law or fact in the ICIJ’s findings.

a. Yim Tith fails to demonstrate any reviewable error in the finding that he likely had close ties with Ta Mok

67. Yim Tith presents a partial and misleading picture of a sample of the evidence relied upon by the ICIJ to find that Yim Tith likely had “close ties” with Ta Mok,¹⁸¹ while ignoring the ICIJ’s reliance on numerous witnesses recounting Yim Tith’s authority.¹⁸² Thus,

¹⁷⁸ **D382/22** Yim Tith Appeal, paras 122-123.

¹⁷⁹ See e.g. Case 002-**D97/15/9** PTC JCE Decision, para. 38; Case 001-**E188** Duch TJ, para. 508; Case 002-**E313** Case 002/01 TJ, para. 693; **D382** Indictment, fn. 267; *Brđanin* AJ, para. 427; *Popović* AJ, para. 1378; *Simba* AJ, para. 250; *Sesay* AJ, paras 611, 1034.

¹⁸⁰ **D382/22** Yim Tith Appeal, paras 124-141 (sub-ground 5.1).

¹⁸¹ **D382/22** Yim Tith Appeal, paras 124-127.

¹⁸² See **D382** Indictment, para. 349.

contrary to Yim Tith's claim, the Indictment did not find that Yim Tith likely had *de facto* authority in the Southwest and Northwest Zones based only on his family connection to Ta Mok.¹⁸³

68. Yim Tith's argument amounts to a challenge to the evidence of three witnesses. Contrary to Yim Tith's suggestion that Riel Son had little knowledge of Yim Tith,¹⁸⁴ Riel Son stated that while he had no "personal contact"¹⁸⁵ with Yim Tith during the Khmer Rouge regime, he saw Yim Tith at the Sector Commerce Office when Riel Son went there for supplies and also saw Yim Tith and Ta Mok travelling together.¹⁸⁶
69. Yim Tith erroneously claims that Sann Lorn did not know about the relationship between Ta Mok and Yim Tith, or even know anything about Yim Tith.¹⁸⁷ In fact, Sann Lorn was related to Yim Tith,¹⁸⁸ and told an OCIJ investigator that "Ta Tith was Ta Mok's brother-in-law",¹⁸⁹ Yim Tith was the Sector 13 Secretary,¹⁹⁰ "Ta Mok ordered Ta Tith to go to work in other areas",¹⁹¹ Yim Tith and Ta Mok "always reported to each other, sharing information mutually",¹⁹² and Ta Mok "took Ta Tith along with him" to the Northwest Zone.¹⁹³
70. Nop Ngim's evidence is also not as Yim Tith presents it.¹⁹⁴ Yim Tith claims that Nop Ngim did not know of Yim Tith's position or the structure of the Southwest Zone.¹⁹⁵ However, Nop Ngim stated that she knew Yim Tith before the Khmer Rouge regime,¹⁹⁶ that Yim Tith was "one of the leaders in the Southwest Zone",¹⁹⁷ that "Ta Mok was senior to Ta Tith",¹⁹⁸ that Ta Mok and Yim Tith visited her unit every month, arriving in the same vehicle,¹⁹⁹ that she attended meetings held by Yim Tith and Ta Mok with

¹⁸³ **D382/22** Yim Tith Appeal, para. 124.

¹⁸⁴ **D382/22** Yim Tith Appeal, para. 126.

¹⁸⁵ **D118/181** Riel Son WRI, A72.

¹⁸⁶ **D118/181** Riel Son WRI, A77-80.

¹⁸⁷ **D382/22** Yim Tith Appeal, para. 126.

¹⁸⁸ **D219/19** Sann Lorn WRI, A711, 828.

¹⁸⁹ **D219/19** Sann Lorn WRI, A709, 827, 955.

¹⁹⁰ **D219/19** Sann Lorn WRI, A884.

¹⁹¹ **D219/19** Sann Lorn WRI, A821, 824.

¹⁹² **D219/19** Sann Lorn WRI, A983.

¹⁹³ **D219/19** Sann Lorn WRI, A774.

¹⁹⁴ *Contra* **D382/22** Yim Tith Appeal, para. 126.

¹⁹⁵ **D382/22** Yim Tith Appeal, para. 126.

¹⁹⁶ **D118/285** Nop Ngim WRI, A11.

¹⁹⁷ **D118/285** Nop Ngim WRI, A9, 12.

¹⁹⁸ **D118/285** Nop Ngim WRI, A17.

¹⁹⁹ **D118/285** Nop Ngim WRI, A7-8, 17.

representatives of the districts and sectors,²⁰⁰ and that she was forced to get married with Yim Tith and Ta Mok present on the day of the ceremony.²⁰¹

71. Further, the ICIJ did not need to distinguish the roles and actions of Yim Tith from Ta Mok when they co-chaired meetings in Sector 1.²⁰² Yim Tith's presence next to Ta Mok at meetings demonstrates Yim Tith's involvement with and endorsement of the policies discussed and implemented.²⁰³ Yim Tith also spoke at such meetings,²⁰⁴ belying his suggestion that the ICIJ was solely imputing the acts of Ta Mok to him. Similarly, Yim Tith asserts that the ICIJ erred by "relying on Mr Yim Tith's family relationship with Ta Mok" when holding that Yim Tith was Sector 3 Secretary,²⁰⁵ however the ICIJ's findings on Yim Tith likely being Sector 3 Secretary do not contain a single reference to Yim Tith's relationship with Ta Mok.²⁰⁶

b. Yim Tith fails to demonstrate any reviewable error in the finding that he likely had concurrent authority in the Southwest and Northwest Zones similar to Ta Mok

72. Yim Tith again selectively relies on parts of individual statements from within a much broader evidential base that the ICIJ relied on for the conclusion that Yim Tith likely had concurrent authority and responsibility in the Southwest and Northwest Zones.²⁰⁷
73. Contrary to Yim Tith's claim, Sann Lorn knew about Yim Tith moving between the zones because Sann Lorn was sent to Ta Mok's office in Battambang in 1978 and was told that Yim Tith had gone to Takeo.²⁰⁸
74. Pech Chim did not, as Yim Tith suggests, "change his evidence" about hearing a broadcast in late 1978 that Yim Tith was receiving guests at the Sector 13 Office.²⁰⁹ In fact, Pech Chim was specifically asked by OCIJ investigators in a subsequent interview if this statement about the broadcast was accurate, to which he replied: "Yes, that is

²⁰⁰ **D118/285** Nop Ngim WRI, A55.

²⁰¹ **D118/285** Nop Ngim WRI, A68, 73.

²⁰² *Contra* **D382/22** Yim Tith Appeal, para. 182.

²⁰³ *See* **D382** Indictment, para. 366 *citing, inter alia*, **D118/285** Nop Ngim WRI, A55-56, **D219/298** Nop Ngim WRI, A13-14. *See also* **D219/835** Nop Ngim WRI, A79, 81, 88, 107, 113; **D382** Indictment, para. 1016.

²⁰⁴ *See* **D219/835** Nop Ngim WRI, A88, 116, 118, 99; **D219/298** Nop Ngim WRI, A14, 16, 22; **D118/285** Nop Ngim WRI, A84, 55-56; **D219/974.1.2** Nop Ngim T. 5 Sept. 2016, p. 46, line 7.

²⁰⁵ **D382/22** Yim Tith Appeal, para. 197.

²⁰⁶ **D382** Indictment, paras 372-376. Yim Tith makes similarly unfounded arguments in relation to other positions, *see* **D382/22** Yim Tith Appeal, paras 188 (Sector 1), 202 (Sector 4), 214 (Northwest Zone).

²⁰⁷ **D382/22** Yim Tith Appeal, para. 136. *See* **D382** Indictment, para. 352, fn. 924.

²⁰⁸ **D219/19** Sann Lorn WRI, A776-781.

²⁰⁹ *Contra* **D382/22** Yim Tith Appeal, para. 136.

- correct. Later on, my messenger told me about this matter”.²¹⁰
75. Likewise, Pann Sarou did not “change[] his testimony”, as Yim Tith alleges.²¹¹ Pann Sarou’s knowledge regarding Yim Tith’s position in Kirivong District was distinct from Pann Sarou’s belief that Yim Tith had been promoted to the National Assembly.²¹² Pann Sarou stated that Yim Tith was District Secretary “until nearly the end of the Khmer Rouge regime”,²¹³ as Pann Sarou frequently saw Yim Tith in meetings in villages and communes in Kirivong.²¹⁴
76. Yim Tith misrepresents the evidence of Soeum Chhoeun, claiming that Soeum Chhoeun “did not see [Yim Tith]”.²¹⁵ In fact, Soeum Chhoeun stated that Yim Tith was the Kirivong District Chairman “until the end of the Khmer Rouge regime, and I often saw him”.²¹⁶ Soeum Chhoeun clarified that he did not see Yim Tith in the months before the regime collapsed, “[b]ut I know that he still administered Kiri Vong District”.²¹⁷
77. Finally, Yim Tith’s misrepresents Huy Krim’s evidence as temporally irrelevant.²¹⁸ Huy Krim stated that he saw Yim Tith’s picture in a DK magazine in both 1976 and 1977,²¹⁹ but this is distinct from his knowledge of Yim Tith’s authority. Huy Krim told the ICIJ that “Ta Tith travelled up and down between the Southwest and Northwest Zones. That’s why he was powerful enough to simply discharge the northwest cadres.”²²⁰ Huy Krim did not state that this knowledge was limited to 1976 or 1977.
78. Yim Tith’s assertion that the ICIJ did not find that he had any subordinates is contradicted by large sections of the Indictment, which held there was sufficient evidence of Yim Tith, *inter alia*, appointing individuals to positions, inspecting sites, giving orders and instructions to lower echelons, holding meetings, managing distribution of supplies, and receiving reports on the implementation of policies from lower level cadres.²²¹ Such findings were made regarding the positions and authority roles he held in both the

²¹⁰ **D118/259** Pech Chim WRI, A136.

²¹¹ *Contra* **D382/22** Yim Tith Appeal, para. 136.

²¹² **D118/302** Pann Sarou WRI, A47-52.

²¹³ **D118/302** Pann Sarou WRI, A26.

²¹⁴ **D118/302** Pann Sarou WRI, A33-36.

²¹⁵ **D118/259** Pech Chim WRI, A136.

²¹⁶ **D219/189** Soeum Chhoeun WRI, A25.

²¹⁷ **D219/189** Soeum Chhoeun WRI, A27.

²¹⁸ **D382/22** Yim Tith Appeal, para. 136.

²¹⁹ **D118/75** Huy Krim WRI, A27, 30.

²²⁰ **D118/75** Huy Krim WRI, A29.

²²¹ **D382** Indictment, paras 327-427.

Southwest and Northwest Zones.²²²

79. Yim Tith concludes, without merit, that the ICIJ failed to show that his relationship with Ta Mok “amounted to Mr Yim Tith’s *de facto* authority in Sector 13 of the Southwest Zone and in the Northwest Zone”²²³ This conclusion mischaracterises the ICIJ’s findings. The Indictment did not, expressly or by implication, find that Yim Tith’s likely *de facto* authority was demonstrated merely by a family tie to Ta Mok.²²⁴ Instead, while Yim Tith’s *de facto* authority may have originated in his family relationship with Ta Mok, Yim Tith’s acts and conduct are the foundation of his indictment.²²⁵

2. Yim Tith fails to demonstrate any reviewable error in the conclusion that he likely held *de jure* positions and *de facto* authority in Kirivong District

80. Yim Tith’s arbitrary division of the evidence supporting the Indictment’s findings on his *de jure* positions from his *de facto* authority in Kirivong District demonstrates his failure to properly address the evidence holistically. His piecemeal assessment of witness statements and erroneous conclusion that the ICIJ relied on inadequate evidence, omitted contradictory accounts, and made uncertain findings, fail to demonstrate any reviewable error of law, error of fact, or abuse of discretion.²²⁶ Beyond the errors in his description of the evidence of a handful of witnesses, Yim Tith’s submissions ignore that the Indictment relied on several other witnesses who gave evidence about Yim Tith’s *de jure* positions²²⁷ and *de facto* authority in Kirivong District.²²⁸

a. Yim Tith fails to demonstrate any reviewable error in the finding that he likely held *de jure* positions in Kirivong District

81. Yim Tith does not present an accurate picture of the two “contradictory” witness statements he alleges the ICIJ ignored.²²⁹ Yim Tith quotes Top Phan’s statement that he “did not know Mr Yim Tith’s position”,²³⁰ but fails to acknowledge that Top Phan told investigators in the same interview that “Ta Tith, Yeay Bau, and Ta Tom were colleagues.

²²² D382 Indictment, paras 327-427.

²²³ D382/22 Yim Tith Appeal, para. 137.

²²⁴ D382 Indictment, paras 348-352.

²²⁵ D382 Indictment, paras 348-352.

²²⁶ *Contra* D382/22 Yim Tith Appeal, paras 142-151.

²²⁷ *See* D382 Indictment, fns 867-868.

²²⁸ D382 Indictment, paras 332-341

²²⁹ D382/22 Yim Tith Appeal, para. 144.

²³⁰ D382/22 Yim Tith Appeal, para. 144.

I think Ta Tith held a senior position”;²³¹ and “[a]s for Ta Tith, he also worked at the [Kirivong] district office, but his house was located outside of the district office compound”.²³²

82. Similarly, Yim Tith quotes Moeng Vet’s statement that “Ta Tith did not do the district work directly”,²³³ but omits that Moeng Vet also told investigators that Yim Tith was on the Kirivong District Committee in 1975,²³⁴ that he (Moeng Vet) was a messenger and brought letters to Yim Tith and that Yim Tith made decisions on distribution of food in the district,²³⁵ that there were two Kirivong District Offices and “[o]ne was at Ta Tith’s house”,²³⁶ that “Ta Tith’s place was the Kirivong District Office”,²³⁷ as well as testifying in Case 002 that Yim Tith was “chief” of Kirivong District – above the district secretary.²³⁸
83. Yim Tith alleges that the ICIJ relied on testimony of his “mere presence” in Kirivong from 1972-1974 to find that Yim Tith had a *de jure* position in Kirivong.²³⁹ However there is no indication in the Indictment that the ICIJ relied on Yim Tith’s presence in Kirivong from 1972-1974 other than to indicate Yim Tith’s prominence in the area even before the indictment period.²⁴⁰
84. As well as erring in relation to the Indictment, Yim Tith errs when discussing the Dismissal Order. Contrary to Yim Tith’s claim that the Dismissal Order “was unable to reach a firm conclusion” as to whether he was Kirivong District Secretary from June 1976 to 1977,²⁴¹ the Dismissal Order variously held “Ta Tith was the district Secretary in 1976”,²⁴² “Ta Tith was the Kiri Vong district Secretary between 1976 and 1977 [and] later he was transferred to Battambang, perhaps in mid-1977”,²⁴³ and “YIM Tith became the Kiri Vong district Secretary and Sector 13 Secretary between 1976 and mid-1977”.²⁴⁴

²³¹ **D118/305** Top Phan WRI, A29.

²³² **D118/305** Top Phan WRI, A56.

²³³ **D382/22** Yim Tith Appeal, para. 144.

²³⁴ **D119/85** Moeng Vet WRI, A32; **D219/488** Moeng Vet WRI, A3.

²³⁵ **D219/488** Moeng Vet WRI, A8, 12.

²³⁶ **D119/84** Moeng Vet WRI, A41.

²³⁷ **D119/85** Moeng Vet WRI, A7.

²³⁸ **D219/899.1.4** Moeng Vet, T. 26 July 2016, p. 38, line 22-p. 39, line 2.

²³⁹ **D382/22** Yim Tith Appeal, para. 145.

²⁴⁰ See **D382** Indictment, para. 328.

²⁴¹ **D382/22** Yim Tith Appeal, para. 146.

²⁴² **D381** Dismissal Order, para. 185.

²⁴³ **D381** Dismissal Order, para. 187. See also para. 667.

²⁴⁴ **D381** Dismissal Order, para. 680.

85. Yim Tith also erroneously claims that the Dismissal Order “did not find that Mr Yim Tith may have been on the Committee prior to January 1976 and his findings do no (sic) support those of the ICIJ on this point”.²⁴⁵ However, the Dismissal Order found that Yim Tith “was the Deputy Secretary” in Kirivong District in 1975.²⁴⁶
86. Tellingly, Yim Tith fails to acknowledge that both the Indictment and Dismissal Order found that Yim Tith was Kirivong Deputy Secretary prior to being appointed District Secretary, and that therefore there was a continuum of his *de jure* authority on the Kirivong District Committee.²⁴⁷

b. Yim Tith fails to demonstrate any reviewable error in the finding that he likely held *de facto* authority in Kirivong District

87. Yim Tith claims that the ICIJ misinterpreted witness evidence and failed to account for contradictory and exculpatory evidence, citing three individuals: Toem Phuon, Nget Ngay, and Moeng Vet.²⁴⁸ However, a review of the totality of the witness evidence shows that Yim Tith is once again being selective in his submission.
88. Yim Tith relies on two interviews of Yim Tith’s nephew, Toem Phuon, in which Toem Phuon said that he did not know what Yim Tith’s position was.²⁴⁹ Yim Tith omits, however, that Toem Phuon told investigators in the first interview that he was sent to live in Pech Sar in Kirivong District to transplant rice seedlings “[a]t the location under Ta Tit’s control”,²⁵⁰ and that “I just learned that [Yim Tith] had a top role, but I did not know what position he was in”.²⁵¹ In a subsequent interview, Toem Phuon responded to a clarifying question of whether he meant to say that Yim Tith was a leader by saying “Yes I do, but I do not know his position”,²⁵² and follows up with: “I think he was probably at the district level, Kiri Vong District”.²⁵³ Further, Toem Phuon stated: “I only know that among the leaders in Kiri Vong District were Yeay Cheam, Ta Tom, and Ta Tith, but I do not know who was senior to whom...”²⁵⁴ Yim Tith wrongly attributes an additional

²⁴⁵ D382/22 Yim Tith Appeal, para. 146.

²⁴⁶ D381 Dismissal Order, para. 185.

²⁴⁷ D382 Indictment, para. 185; D381 Dismissal Order, para. 330.

²⁴⁸ D382/22 Yim Tith Appeal, paras 147-150.

²⁴⁹ D382/22 Yim Tith Appeal, para. 148.

²⁵⁰ D118/20 Toem Phuon WRI, A4-6.

²⁵¹ D118/20 Toem Phuon WRI, A10.

²⁵² D219/466 Toem Phuon WRI, Q&A 245.

²⁵³ D219/466 Toem Phuon WRI, A247.

²⁵⁴ D219/466 Toem Phuon WRI, A277. *See also* A263-264, 318.

- statement to Toem Phoun which is, in fact, witness Top Phan.²⁵⁵ This wrongly cited statement does not support Yim Tith's claim in any event.²⁵⁶
89. Yim Tith claims that Nget Ngay "stated that he knew nothing about Mr YIM Tith from his own experience".²⁵⁷ However, Nget Ngay told investigators that he saw Yim Tith "often because [Yim Tith] went to supervise villages" in Kirivong District.²⁵⁸ Nget Ngay's evidence also gave a clear timeframe for when Yim Tith was Kirivong District Secretary,²⁵⁹ telling an OCIJ investigator that he worked in Svay Sa village, Kirivong District, until late 1977²⁶⁰ and it was during this time that he saw and spoke to Yim Tith.²⁶¹ Additionally, Yim Tith's assertion that the ICIJ incorrectly relied on Nget Ngay "as the source of the finding that Mr Yim Tith was Ta Tom's 'superior'" is belied by a review of the relevant footnote in the Indictment, which cites to Case 002 testimony as well as the statement of another witness in Case 004.²⁶²
90. As with his allegations regarding the findings on his *de jure* position, Yim Tith fails to undermine Moeng Vet's evidence in relation to *de facto* authority. Contrary to the suggestion that Moeng Vet's evidence concerned a short period of time, Moeng Vet told investigators that Yim Tith was already on the Kirivong District Committee when Moeng Vet arrived in September 1975,²⁶³ and that he (Moeng Vet) "handed the letters directly to Yim Tith"²⁶⁴ when he started delivering messages to Yim Tith's office "between early 1976 and late 1976".²⁶⁵ Moeng Vet further stated that there was no change in personnel in Yim Tith's office between September 1975 and March 1977.²⁶⁶ Likewise, the assertion that Moeng Vet's basis of knowledge about Yim Tith came from Moeng Vet's mother is clearly contradicted by Moeng Vet's personal experience as a messenger delivering letters to Yim Tith.²⁶⁷ Moeng Vet told investigators that he was informed by his mother

²⁵⁵ **D118/305** Top Phan WRI.

²⁵⁶ **D118/305** Top Phan WRI, A29, 56.

²⁵⁷ **D382/22** Yim Tith Appeal, para. 149.

²⁵⁸ **D118/44** Nget Ngay WRI, A13.

²⁵⁹ *Contra* **D382/22** Yim Tith Appeal, para. 149.

²⁶⁰ **D118/44** Nget Ngay WRI, A1-2.

²⁶¹ **D118/44** Nget Ngay WRI, A11-14.

²⁶² *See* **D382** Indictment, fn. 869.

²⁶³ **D119/85** Moeng Vet WRI, A22; **D119/85** Moeng Vet WRI, A32.

²⁶⁴ **D219/488** Moeng Vet WRI, A10.

²⁶⁵ **D219/488** Moeng Vet WRI, A6-7.

²⁶⁶ **D219/488** Moeng Vet WRI, A30-31.

²⁶⁷ *See e.g.* **D219/488** Moeng Vet WRI, A8, 12.

that Ta Tom was arrested²⁶⁸ and that Yim Tith was Ta Tom's superior.²⁶⁹ Significantly, Moeng Vet's mother was Ta Tom's cousin.²⁷⁰

3. Yim Tith fails to demonstrate any reviewable error in the finding that he likely held *de jure* positions and *de facto* authority in Sector 13

91. As in his previous sub-ground, Yim Tith demonstrates his failure to properly address the evidence holistically by once again arbitrarily dividing the evidence supporting the ICIJ's findings on his *de jure* position from his *de facto* authority in Sector 13. Yim Tith's suggestion that the ICIJ could not have found that Yim Tith had *de facto* authority without evidence of a *de jure* position exemplifies his errant analysis.²⁷¹ Yim Tith's selective approach to the evidence and erroneous conclusions fail to demonstrate any reviewable error of law or fact.²⁷²

a. Yim Tith fails to demonstrate any reviewable error in the finding that he likely held a *de jure* position on the Sector 13 Committee

92. Contrary to Yim Tith's claim that the Indictment was "unable to make a finding that Mr Yim Tith served as Sector 13 Secretary",²⁷³ the ICIJ "concluded that Yim Tith served as Sector 13 Secretary at some point during the DK".²⁷⁴ The ICIJ relied on several "insider witnesses" to conclude Yim Tith held this *de jure* position.²⁷⁵ That witnesses gave evidence about Yim Tith holding this position in 1975, 1976, 1977, or 1978²⁷⁶ merely serves to highlight the prominence that Yim Tith had in Sector 13 throughout the indictment period. Notably, the Dismissal Order also found that Yim Tith "held the position of Sector 13 Secretary for one year before leaving for the Northwest Zone"²⁷⁷ and that "Yim Tith became the Kiri Vong district Secretary and Sector 13 Secretary between 1976 and mid-1977".²⁷⁸

b. Yim Tith fails to demonstrate any reviewable error in the finding that he likely held *de facto* authority in Sector 13

²⁶⁸ D119/85 Moeng Vet WRI, Q&A28.

²⁶⁹ D119/85 Moeng Vet WRI, A25.

²⁷⁰ D119/85 Moeng Vet WRI, A1, 25.

²⁷¹ D382/22 Yim Tith Appeal, para. 161.

²⁷² *Contra* D382/22 Yim Tith Appeal, paras 154-163 (sub-ground 5.2.ii).

²⁷³ D382/22 Yim Tith Appeal, paras 155.

²⁷⁴ D382 Indictment, para. 346.

²⁷⁵ D382 Indictment, para. 346.

²⁷⁶ D382 Indictment, para. 346.

²⁷⁷ D381 Dismissal Order, para. 668.

²⁷⁸ D381 Dismissal Order, para. 680.

93. Yim Tith fails to explain how evidence of him inspecting worksites, attending meetings, or working in the Southwest Zone office are “irrelevant factors” when assessing *de facto* authority in the context of the strict hierarchical structure of the CPK.²⁷⁹ The Indictment relies on numerous witnesses to find that Yim Tith likely had *de facto* authority in Sector 13 and in the Southwest Zone, most of whom Yim Tith does not reference in his arguments.²⁸⁰ Instead, Yim Tith makes several erroneous claims based on a partial presentation of witness evidence.
94. For example, Yim Tith claims that the Indictment concluded that he held regular meetings at the Sector 13 office based on witness Pech Chim hearing one radio broadcast.²⁸¹ However, the Indictment, in the relevant passage, cites to sections of two of Pech Chim’s interviews – neither of which is referred to by Yim Tith. In fact, Pech Chim stated that “[w]hen Angkar called me for a meeting, I would meet [Yim Tith] at the Sector 13 office”.²⁸² Asked how often he met Yim Tith at the sector office, Pech Chim replied “I have met him so many times”.²⁸³
95. Similarly, Yim Tith asserts that the ICIJ disregarded conflicting evidence from Moeng Vet without stating what this apparently conflicting evidence was.²⁸⁴ Yim Tith cites to a number of statements in which Moeng Vet describes his knowledge of Yim Tith’s various roles at the Sector 13 level, including Sector 13 assistant in 1975, deputy in 1976, secretary after Ta Saom in 1977, and secretary in 1978.²⁸⁵ Nor does Yim Tith specify what he means by Moeng Vet exaggerating or being mistaken in his evidence.²⁸⁶ Assuming Yim Tith is referring to Moeng Vet telling investigators in one interview that Yim Tith “always sat on the right side” of the Sector 13 Secretary²⁸⁷ and in another interview stating “I saw [Yim Tith] once”,²⁸⁸ this may be explained by the latter statement relating to a meeting that lasted 10 days, during which “Ta Tith sat at the same place, on the stage at the right hand side”.²⁸⁹ Yim Tith also mischaracterises Moeng Vet’s evidence

²⁷⁹ **D382/22** Yim Tith Appeal, para. 125.

²⁸⁰ **D382** Indictment, paras 348-351.

²⁸¹ **D382/22** Yim Tith Appeal, para. 153.

²⁸² **D118/79** Pech Chim WRI, A31.

²⁸³ **D118/79** Pech Chim WRI, A32.

²⁸⁴ **D382/22** Yim Tith Appeal, para. 158.

²⁸⁵ **D119/84** Moeng Vet WRI, A34; **D119/85** Moeng Vet WRI, A11-12, 24; **D219/488** Moeng Vet WRI, A34-35, 37-39, 93. *See also* **D219/899.1.4** Moeng Vet, T. 26 July 2016, p. 38, line 22-p. 39, line 4.

²⁸⁶ **D382/22** Yim Tith Appeal, para. 158.

²⁸⁷ **D119/85** Moeng Vet WRI, A12.

²⁸⁸ **D219/488** Moeng Vet WRI, A40.

²⁸⁹ **D219/488** Moeng Vet WRI, A57. *Contra* **D382/22** Yim Tith Appeal, para. 134. *See e.g.* Case 002-E313

in this regard, asserting that Moeng Vet told investigators that Yim Tith sat with the district committee in the front row at the meeting, when Moeng Vet was clear that Yim Tith sat with the sector committee on the stage.²⁹⁰

96. Yim Tith asserts that the ICIJ made no findings about the *de facto* authority of other individuals on the Sector 13 Committee relative to the authority of Yim Tith.²⁹¹ This is irrelevant for two main reasons. First, the ICIJ is required to investigate and assess the acts and conduct of Yim Tith, not that of other individuals who were not named in the introductory or supplementary submissions.²⁹² Second, the example Yim Tith provides of an individual named “Ranh Bith” being an authority figure in the Southwest Zone is misleading.²⁹³ Yim Tith cites to an academic work which in turn does not cite to anything to support this claim;²⁹⁴ the Case 002/02 Trial Judgment does not refer to anyone named “Ranh Bith” in its findings on the authority structure in the Southwest Zone;²⁹⁵ and, significantly, Yim Tith could have requested investigative acts regarding “Ranh Bith” or any other individual he considered as having a position of power that Yim Tith was himself alleged to hold at any point during the investigation.²⁹⁶ Yim Tith did not do so.
97. Additionally, Yim Tith extensively challenges the evidence of Chan Vicheth,²⁹⁷ but fails to demonstrate any error in the ICIJ’s reliance on this witness. Yim Tith wrongly claims that Chan Vicheth’s evidence regarding Yim Tith’s role in the Southwest Zone related to the period April to July 1977.²⁹⁸ Yim Tith relies on this errant timeframe to assert that Chan Vicheth’s statement was temporally contradictory to Sao Chobb’s evidence on Yim Tith’s role in the Northwest Zone.²⁹⁹ However, Chan Vicheth told investigators that he saw Yim Tith almost every day in the zone office in Takeo during a four-month period in 1975.³⁰⁰ There is consequently no contradiction between the evidence of these two witnesses and no error in the ICIJ relying on their respective accounts to support the

Case 002/01 TJ, paras 215-220, 859, 913.

²⁹⁰ **D219/488** Moeng Vet WRI, A56-58.

²⁹¹ **D382/22** Yim Tith Appeal, para. 159.

²⁹² See Internal Rules 55(2), (4).

²⁹³ **D382/22** Yim Tith Appeal, para. 159.

²⁹⁴ **D1.3.15.2** Timothy Carney Article, EN 00105142-43, 52.

²⁹⁵ Case 002-E465 Case 002/02 TJ, paras 910-917.

²⁹⁶ See Internal Rule 76.

²⁹⁷ **D382/22** Yim Tith Appeal, paras 127-133.

²⁹⁸ **D382/22** Yim Tith Appeal, para. 129.

²⁹⁹ **D382/22** Yim Tith Appeal, para. 129.

³⁰⁰ **D219/853** Chan Vicheth WRI, A15-16, 18-20.

findings on Yim Tith's likely roles in the Southwest and Northwest Zones.³⁰¹

98. Yim Tith's assertion that Chan Vicheth's evidence was contradictory or exculpatory in relation to Yim Tith's acts and conduct is also erroneous.³⁰² Chan Vicheth told an OCIJ investigator that Yim Tith received guests in his office for "important matters",³⁰³ the guests "were from the district level" at Tram Kak,³⁰⁴ and Yim Tith communicated with figures in Angkor Borei District, Koh Andet District, and Prey Kakbas District – with Chan Vicheth unsure if these people "were at the division, sector or base levels", but clear that "they were under Ta Tith's order".³⁰⁵
99. Given his failure to demonstrate any error in the ICIJ's treatment of the evidence, Yim Tith's claim that the ICIJ applied an incorrect legal standard when assessing witness statements is without foundation.³⁰⁶ Yim Tith's submissions amount to a disagreement with the conclusions reached in the Indictment as opposed to a legal or factual error.

4. Yim Tith fails to demonstrate any reviewable error in the finding that he was likely Secretary of Sector 1

a. Yim Tith fails to demonstrate any reviewable error in the finding that he was likely appointed Secretary of Sector 1

100. Yim Tith fails to demonstrate how the ICIJ's finding that he was likely Sector 1 Secretary from around June 1978 until the end of the DK regime was a reviewable error of law or fact.³⁰⁷ For the reasons discussed below, the ICIJ correctly found, on a balance of probabilities, that there is sufficient evidence that Yim Tith was likely Sector 1 Secretary in June 1978 based on evidence (i) of when Yim Tith's predecessor Ta Pet was demoted from his Sector 1 Secretary position or was no longer seen in this role;³⁰⁸ and (ii) from

³⁰¹ *Contra* **D382/22** Yim Tith Appeal, para. 129.

³⁰² **D382/22** Yim Tith Appeal, paras 132-133.

³⁰³ **D219/853** Chan Vicheth WRI, A31. Regarding Yim Tith's statement about the office being a house with children (**D382/22** Yim Tith Appeal, para. 132), Chan Vicheth stated that "[w]henver there was such meeting, the children were asked to go away", *see* A33.

³⁰⁴ **D219/853** Chan Vicheth WRI, A111.

³⁰⁵ **D219/853** Chan Vicheth WRI, A158.

³⁰⁶ **D382/22** Yim Tith Appeal, para. 163.

³⁰⁷ *Contra* **D382/22** Yim Tith Appeal, paras 164-188 (sub-ground 5.2.iii); *See* Preliminary Submissions, paras 17, 20 (standard of review).

³⁰⁸ **D382** Indictment, fns 938 (*citing, inter alia*, **D219/117** Top Seung WRI, A68, **D219/210** Lek Phiv WRI, A4, **D219/85** Vy Phann WRI, A3, **D118/69** Nuon Muon WRI, A12-13), 943 (*citing, inter alia*, **D118/69** Nuon Muon WRI, A11-12, **D219/117** Top Seung WRI, A67, 79, **D118/77** Nang Ny WRI, A33-36, 45, **D118/136** Chhean Hea WRI, A43, **D219/368** Chhoeung Bean WRI, A39). *See also* **D34.1.9** Heng Teav Interview by Steve Heder, EN 01181114 (*see* **D1.3.18.2** S-21 Muol Sambath *alias* Ros Nhim S-21 Confession, EN 00780859); **D118/77** Nang Ny WRI, A1, 45; **D219/532** Lies Kung WRI, A17 *reiterating* **D219/416** Lies Kung WRI, A1; **D118/136** Chhean Hea WRI, A2; **D219/233** Chhean Hea WRI, A21;

numerous witnesses who learned of Yim Tith's Sector 1 Secretary position through their work, including meetings that they attended.³⁰⁹

101. Yim Tith erroneously suggests that “direct evidence” of his appointment is necessary to demonstrate him holding the position of sector secretary.³¹⁰ Instead, the ICIJ properly relied on witnesses who learned about Yim Tith's position from Yim Tith's actions, other people who interacted directly with Yim Tith, and through the common knowledge of people living and working in Sector 1.³¹¹ For example, Top Seung (i) worked at a Sector 1 crime site, (ii) no longer saw Ta Pet inspecting it in mid-1978, and (iii) around the same time saw a new person regularly visiting the site and meeting with her supervisor.³¹² Top Seung learned from her supervisor that the person visiting the site was Yim Tith, that Yim Tith had replaced Ta Pet, and that he was Sector Committee.³¹³ This evidence of Yim Tith replacing Ta Pet as Sector 1 Secretary in mid-1978 is supported by the other evidence underlying the ICIJ's finding³¹⁴ as well as additional evidence in the case file.³¹⁵ This includes Ta Pet *himself* stating that Yim Tith became Sector 1 Secretary after Northwest Zone Secretary Ros Nhim's arrest, which an S-21 record indicates occurred no later than 14 June 1978.³¹⁶
102. Yim Tith also unpersuasively seeks to discredit the witnesses whose evidence underlies the ICIJ's finding. Yim Tith's failure to view the evidence holistically is demonstrated by him disregarding that (i) Lek Phiv was not certain of Yim Tith's and Ta Pet's role when

D219/689 Sok Cheat WRI, A20; **D219/953** Chhoeng Chhoeuth WRI, A55-56.

³⁰⁹ **D382** Indictment, fn. 938 (*citing, inter alia*, **D118/243** Chham Luy WRI, A10-11, **D118/245** Chuon Than WRI, A4, 17-18, **D118/299** Chuon Than WRI, A24; **D118/285** Nop Ngim WRI, A7, 63, **D118/77** Nang Ny WRI, A23-24, **D219/416** Lies Kung WRI, A11-12; **D219/368** Chhoeung Bean WRI, A10-14).

³¹⁰ See Preliminary Submissions, para. 14 (freedom of evidence); *Contra* **D382/22** Yim Tith Appeal, para. 165.

³¹¹ See e.g. **D118/77** Nang Ny WRI, A45, 29, 36; **D118/243** Chham Luy WRI, A11; **D219/263** Chham Luy WRI, A36-38; **D118/245** Chuon Than WRI, A18.

³¹² **D219/117** Top Seung WRI, A49, 108 (witness's position), A59-61, 65 (Ta Pet's position and conduct on-site), A68-69, 72-73, 75, 90-91 (Ta Pet's disappearance followed by Yim Tith's presence), A143, 153 (witness's supervisor meeting with Yim Tith). *Contra* **D382/22** Yim Tith Appeal, para. 165.

³¹³ **D219/117** Top Seung WRI, A79 (witness's supervisor confirming identity and position of Yim Tith). *Contra* **D382/22** Yim Tith Appeal, para. 165.

³¹⁴ **D382** Indictment, fns 938 (*citing, inter alia*, **D219/210** Lek Phiv WRI, A3-5, **D219/85** Vy Phann WRI, A2-3, **D118/69** Nuon Muon WRI, A12-13), 943 (*citing, inter alia*, **D118/69** Nuon Muon WRI, A11-12, **D219/117** Top Seung WRI, A67, 79, **D118/77** Nang Ny WRI, A33-36, 45, **D118/136** Chhean Hea WRI, A43, **D219/368** Chhoeung Bean WRI, A39).

³¹⁵ See e.g. **D118/77** Nang Ny WRI, A1, 45; **D219/532** Lies Kung WRI, A17 *reiterating* **D219/416** Lies Kung WRI, A1; **D118/136** Chhean Hea WRI, A2; **D219/233** Chhean Hea WRI, A21; **D219/689** Sok Cheat WRI, A20; **D219/953** Chhoeng Chhoeuth WRI, A55-56.

³¹⁶ **D34.1.9** Heng Teav Interview by Steve Heder, EN 01181114 (“I was assigned as Sector 1 Deputy Secretary. After they had arrested Ta Nhim [...], they assigned A Tith [...] as secretary and me as his deputy.”) (*see* **D1.3.18.2** S-21 Muol Sambath *alias* Ros Nhim S-21 Confession, EN 00780859). *Contra* **D382/22** Yim Tith Appeal, para. 166.

they chaired meetings together but, after Ta Pet's arrest, Lek Phiv knew that Yim Tith chaired the meetings as Sector 1 Secretary;³¹⁷ (ii) Vy Phann's sighting of Yim Tith with Ta Pet must have occurred before November 1978 because Ta Pet said his own arrest took place around August 1978;³¹⁸ and (iii) Nop Ngim knew of Yim Tith's position when she was on the Samlaut District Committee in Sector 1.³¹⁹ Similarly, Yim Tith's assertions regarding Chhean Hea, Han Thy, and an academic article overlook evidence in the case file that confirms Ta Pet was arrested no later than around two months after Ros Nhim's arrest.³²⁰

103. Yim Tith also erroneously suggests that Nang Ny's and Lies Kung's evidence is contradictory because Yim Tith makes the unfounded assumption that those witnesses attended the same meeting in Bay Damram Commune.³²¹ Yim Tith neglects to explain why there could only have been one meeting in the same geographic area after June 1978.
104. Additionally, Yim Tith's complaints regarding witnesses' descriptions of his physical appearance during the DK regime are meritless given that the ICIJ did not base his finding on those subjective descriptions.³²²

b. Yim Tith fails to demonstrate any reviewable error in the finding that he likely exercised authority as Sector 1 Secretary

105. Yim Tith fails to demonstrate how the ICIJ's finding that he likely exercised authority as Secretary of Sector 1 until the end of the DK regime was a reviewable error of law or fact

³¹⁷ **D219/210** Lek Phiv WRI, A4, 6-7. *See also* **D219/236** Lek Phiv WRI, A4, 17. *Contra* **D382/22** Yim Tith Appeal, para. 165.

³¹⁸ Ta Pet says he was arrested one or two months after Ta Nhim's arrest, although he mistakenly recalled Ta Nhim being arrested later than the date of Ta Nhim's S-21 confession, *see* **D34.1.9** Heng Teav *alias* Ta Pet Interview by Steve Heder, EN 01181152-53 (When Ta Nhim was arrested, his son made phone calls to Phnom Penh "around the same month – August"), EN 01181104 ("Around September or October 1978, I was arrested and imprisoned"). *See also* **D219/85** Vy Phann WRI, A3; **D219/825.1.2** OCIJ S-21 Prisoner List, EN 01222369, Number 913; **D382** Indictment fn. 945 (*citing, inter alia*, **D118/136** Chhean Hea WRI, A37). A similar response also applies to Yim Tith's complaint regarding Nuon Muon. *Contra* **D382/22** Yim Tith Appeal, para. 165.

³¹⁹ **D118/285** Nop Ngim WRI, A51, 55, 44. *See also* **D118/285** Nop Ngim WRI, A42, 65; **D219/835** Nop Ngim WRI, A137. *Contra* **D382/22** Yim Tith Appeal, para. 165.

³²⁰ *See e.g.* **D34.1.9** Heng Teav *alias* Ta Pet Interview by Steve Heder, EN 01181104. Ta Pet says he was arrested one or two months after Ta Nhim's arrest, although he mistakenly recalled Ta Nhim being arrested later than the date of Ta Nhim's S-21 confession, *see* **D34.1.9** Heng Teav *alias* Ta Pet Interview by Steve Heder, EN 01181152-53, 104. *See also* **D382** Indictment fn. 945 (*citing, inter alia*, **D118/136** Chhean Hea WRI, A37, **D118/86** Nhoek Ly WRI, A13, **D219/654** Sok Cheat WRI, A69); **D219/689** Sok Cheat WRI, A20. *Contra* **D382/22** Yim Tith Appeal, paras 167-169, 166.

³²¹ *Contra* **D382/22** Yim Tith Appeal, para. 165.

³²² *Contra* **D382/22** Yim Tith Appeal, para. 165.

or abuse of discretion.³²³ For the reasons discussed below, the ICIJ correctly found, on a balance of probabilities, that there is sufficient evidence that Yim Tith exercised authority as Sector 1 Secretary over his subordinates³²⁴ in relation to security³²⁵ and economic³²⁶ matters, and that he did this through meetings,³²⁷ reports,³²⁸ letters,³²⁹ and site inspections.³³⁰

106. Yim Tith's complaint about the lack of evidence underlying findings is the result of his failure to read the Indictment as a whole. He disregards the evidence that the ICIJ relied on for the findings that Yim Tith likely had subordinates and effective control over them,³³¹ and that he likely ordered his subordinates to, *inter alia*, "re-educate", "smash", and report.³³² Similarly, the ICIJ relied on more evidence than Yim Tith claims for the finding that he likely (i) had the power to shield individuals from arrest and execution,³³³ (ii) was in charge of economics,³³⁴ and (iii) issued handwritten instructions, all of which is supported by other evidence in the case file.³³⁵
107. Yim Tith's disagreement with the ICIJ's consideration of the CPK Statute to find that Yim Tith likely had *de jure* authority over the district- and commune-level cadres in Sector 1 ignores that the CPK Statute is relevant for establishing Yim Tith's control over subordinates and can support evidence of what powers and duties he exercised in

³²³ *Contra* **D382/22** Yim Tith Appeal, paras 164-188 (sub-ground 5.2.iii). *See* Preliminary Submissions, paras 17, 20, 22 (standard of review).

³²⁴ **D382** Indictment, fns 962-974, 976-981, 983-987.

³²⁵ **D382** Indictment, fns 953-958, 969, 971-972, 980, 983-984. *See also* fns 984, 987.

³²⁶ **D382** Indictment, fns 959-961, 968, 981. *See also* fn. 987.

³²⁷ **D382** Indictment, fns 963-967, 973-974, 976-978, 983, 987.

³²⁸ **D382** Indictment, fns 986, 970, 979.

³²⁹ **D382** Indictment, fn. 985.

³³⁰ **D382** Indictment, fns 961, 984, 987.

³³¹ *See e.g.* **D382** Indictment, paras 360 (position), 364 (authority and power), 363-366, 371 (subordinates). *See also* **D382** Indictment, paras 178-182 (CPK Statute). *Contra* **D382/22** Yim Tith Appeal, para. 175.

³³² *See* **D382** Indictment, fns 955 (*citing, inter alia*, **D118/245** Chuon Than WRI, A17, **D118/285** Nop Ngim WRI, A56, **D219/117** Top Seung WRI, A125 (*see also* A79, 87, 143), **D219/85** Vy Phann WRI, A5, **D219/533** Chhoeung Bean WRI, A14), 970-972. *Giving other orders: See e.g.* **D382** Indictment, fns 955 (*citing, inter alia*, **D219/117** Top Seung WRI, A100, **D219/368** Chhoeung Bean WRI, A90, 94, **D219/533** Chhoeung Bean WRI, A12), 970. *Contra* **D382/22** Yim Tith Appeal, para. 175.

³³³ *See* **D382** Indictment, fns 956-957 (executions), 958 (arrests). *See also* **D34.1.10** Heng Teav Interview by Steve Heder, EN 01181079-80; **D1.3.11.15** Heng Teav Interview by Steve Heder, EN 00426119. *Contra* **D382/22** Yim Tith Appeal, para. 176.

³³⁴ *See* **D382** Indictment, fns 961, 981 (*citing, inter alia*, **D219/210** Lek Phiv WRI, A8, **D219/292** Lek Phiv WRI, A35); **D219/368** Chhoeung Bean WRI, A24, A58. *See also* **D382** Indictment, fn. 981 (*citing, inter alia*, **D118/285** Nop Ngim WRI, A55, **D219/515** Chheun Chhuoy WRI, A30); **D219/298** Nop Ngim WRI, A15. *Contra* **D382/22** Yim Tith Appeal, para. 180.

³³⁵ **D382** Indictment, fn. 985. *See also* **D219/62** Preap Kap WRI, A44. *Contra* **D382/22** Yim Tith Appeal, para. 186.

reality.³³⁶

108. Yim Tith makes unfounded complaints about the ICIJ's finding that he likely had authority and control over the military in Sector 1.³³⁷ The ICIJ relied on Soeun Mat, a witness who: had superiors that "mentioned Ta Tith's soldiers" to him;³³⁸ knew "[e]veryone [...] heard that Ta Tith was a strong military leader";³³⁹ and attended meetings in Sector 1 in which Yim Tith discussed security matters,³⁴⁰ even after Ta Pet was purged.³⁴¹ In any event, Yim Tith overlooks other supporting evidence in the case file.³⁴²
109. Yim Tith unsuccessfully seeks to discredit the witnesses underlying the ICIJ's findings that he likely had authority over his subordinates in security matters, and likely had authority and control over personnel matters.³⁴³ For example, he neglects to explain why (i) the exact date that witnesses Vy Phann, Nop Ngim, Chhoeung Bean, Chhoeung Chhoeuth, and Nang Ny met with Yim Tith is relevant when their evidence relates to the period after his Sector 1 appointment,³⁴⁴ and (ii) witnesses Chhoeung Bean and Chhoeung Chhoeuth needed to have heard Yim Tith introduce himself at meetings they attended when they provided evidence on how they knew Yim Tith despite this.³⁴⁵
110. Yim Tith's piecemeal assessment of witnesses' evidence results in his failure to

³³⁶ See **D382** Indictment, fn. 239; Case 002-**D427** Closing Order, para. 1327; Case 002-**E313** Case 002/01 TJ, paras 896, 913; Case 002-**E465** Case 002/02 TJ, para. 4189; Case 004/2-**D359/24** & **D360/33** International PTC Judges' Opinion on Closing Order, para. 479. *Contra* **D382/22** Yim Tith Appeal, paras 180-181.

³³⁷ *Contra* **D382/22** Yim Tith Appeal, para. 171.

³³⁸ **D219/538** Soeun Mat WRI, A38-39, 56, 54.

³³⁹ **D219/538** Soeun Mat WRI, A38. *See also* A20.

³⁴⁰ **D219/538** Soeun Mat WRI, A17, 30, 82.

³⁴¹ **D219/538** Soeun Mat WRI, A17, 31, 44. *See also* A37.

³⁴² *See e.g.* **D1.3.15.1** Craig Etcheson Written Record of Analysis, para. 67; **D34.1.10** Heng Teav Interview by Steve Heder, EN 01181079-80 ("soldiers [...] under my command [...] I instructed" to release "around forty prisoners" at the "only" prison in Banan. "[T]hey were released for three days and were later arrested." The arrester "was Ta Tit, the sector secretary."); **D219/117** Top Seung WRI, A200; **D123/1/5.41** Long Sokhy *alias* Long Ratha DC-Cam Statement, EN 01082053. *See also* **D1.3.11.15** Heng Teav Interview by Steve Heder, EN 00426119; **D219/64** Peou Koeun WRI, A21 (prior Sector 1 Secretary was a military commander). *Contra* **D382/22** Yim Tith Appeal, para. 171.

³⁴³ Yim Tith misreads the ICIJ's finding that he had authority and control over personnel matters (*e.g.* internal enemies) as "personal" matters. *See* **D382** Indictment, para. 364i, fn. 954. *Contra* **D382/22** Yim Tith Appeal, paras 172-173.

³⁴⁴ *Contra* **D382/22** Yim Tith Appeal, para. 174. Yim Tith's complaint that "[t]he ICIJ's failure to take into consideration the timing of the meetings was so unfair and unreasonable as to constitute an abuse of his discretion" does not bring any further elucidation on the issue. *See* **D382/22** Yim Tith Appeal, para. 175. *See also* para. 187.

³⁴⁵ *See* **D219/368** Chhoeung Bean WRI, A93; **D219/953** Chhoeung Chhoeuth WRI, A69. *Contra* **D382/22** Yim Tith Appeal, para. 174.

appreciate that, for example,³⁴⁶ his likely power to shield individuals from arrest and execution is demonstrated in (i) Phar Phat's evidence, which indicates that Yim Tith telling Ta Nen, "If you [...] kill these people, who will protect you [...]" amounted to an order for those people to be released due to Yim Tith's senior position to Ta Nen,³⁴⁷ and (ii) Chhoeung Bean's evidence, which shows that Ta Saman avoided death to assist Yim Tith with the orientation of Sector 1 and, more importantly, to be a controller of Kanghat Dam, a site for which Yim Tith had overall responsibility.³⁴⁸

111. Further, Yim Tith unpersuasively seeks to discredit the ICIJ's findings regarding Yim Tith's regular meetings that Nop Ngim attended. Yim Tith's disagreement with the ICIJ's reasoned decision not to rely on Nop Ngim's revocation of evidence regarding the frequency of the meetings incorrectly assumes that letters of assurance remove all fears a witness may have. Yim Tith also erroneously assumes that Nop Ngim's husband's visual impairment prevents him from being a source of information on the frequency he escorted Nop Ngim to her meetings with Yim Tith as her husband rather than as a messenger,³⁴⁹ and Yim Tith overlooks the fact that Nop Ngim was never asked to confirm whether her husband accompanied her to the meetings.³⁵⁰ Even assuming Yim Tith is correct that Nop Ngim met with Yim Tith no earlier than September 1978, which is not the case,³⁵¹ he again fails to explain how the timing of such a meeting undermines the ICIJ's finding that he was likely Sector 1 Secretary from around June 1978 until the end of the DK regime based on the other evidence considered in the Indictment.

5. Yim Tith fails to demonstrate any reviewable error in the finding that he was likely Secretary of Sector 3

112. Yim Tith fails to demonstrate any reviewable error of law or fact in the assessment of

³⁴⁶ See also **D118/254** Chuon Than WRI, A4, 18; **D118/299** Chuon Than WRI, A24, 21-22. *Contra* **D382/22** Yim Tith Appeal, paras 172-174.

³⁴⁷ **D118/244** Phar Pet WRI, A6, 9. See also **D219/546** Phar Pet WRI, A49 (witness attributes his release to Yim Tith and not Ta Nen); **D382** Indictment, paras 178-179, 182. *Contra* **D382/22** Yim Tith Appeal, paras 176-178.

³⁴⁸ **D219/430** Chhoeung Bean WRI, A21; **D219/368** Chhoeung Bean WRI, A141. See also **D219/373** Nom Phoun A31-32; **D118/138** Tiep Tith WRI, A11. *Contra* **D382/22** Yim Tith Appeal, para. 179.

³⁴⁹ **D219/974.1.2** Nop Ngim T. 5 Sept. 2016, p. 43, lines 10-11; **D219/62** Preap Kap WRI, A64-66, 68. In light of this evidence, Yim Tith's speculation on what causal effect a letter of assurance should have on witness evidence becomes irrelevant. *Contra* **D382/22** Yim Tith Appeal, para. 184.

³⁵⁰ **D219/285** Nop Ngim WRI, A81. *Contra* **D382/22** Yim Tith Appeal, para. 184.

³⁵¹ See **D118/285** Nop Ngim WRI, A28-29; **D219/835** Nop Ngim WRI, A58; **D219/974.1.2** Nop Ngim T. 5 Sept. 2016, p. 41, lines 14-15; **D219/298** Nop Ngim WRI, 7 May 2015, A4. See also **D118/285** Nop Ngim WRI, A68; **D219/62** Preap Kap WRI, A31; **D219/974.1.2** Nop Ngim T. 5 Sept. 2016, p. 110, lines 7-10. *Contra* **D382/22** Yim Tith Appeal, para. 185.

evidence or the conclusion reached in the Indictment regarding his likely position as Sector 3 Secretary.³⁵² The ICIJ relied on consistent and clear evidence from Yim Tith's subordinates and those who attended meetings with Yim Tith in Sector 3 to conclude, based on the applicable "probability" standard, that Yim Tith held this role.³⁵³

113. At the outset, whether the ICIJ was referring to a *de jure* position or *de facto* role as Sector 3 Secretary is irrelevant.³⁵⁴ The ICIJ found that Yim Tith was chairing meetings in Sector 3, appointing cadres, communicating with districts regarding security and economic issues, and visiting district offices in Sector 3.³⁵⁵
114. Yim Tith's approach, as in his other grounds, is to selectively challenge evidence relied on by the ICIJ. For example, Yim Tith mischaracterises the evidence of Muol Eng,³⁵⁶ who was a subordinate of Yim Tith's in Sector 3. Contrary to Yim Tith's suggestion that Muol Eng "never heard about 'Ta Tith's appointment at this position'",³⁵⁷ Muol Eng told the investigators that "Yim Tith commanded Sector 3 [...] I learned of this when I was serving as the replacement of the district chief" of Bavel District,³⁵⁸ and "[t]he district under my control had been ceded to Ta Tith".³⁵⁹
115. Yim Tith also erroneously claims that Muol Eng made assumptions about Yim Tith's position because "Mr Yim Tith came once in late September or early October 1978" to inspect Muol Eng's rice fields'.³⁶⁰ The truth is very different. Muol Eng stated, *inter alia*, that he met Yim Tith twice: "the first time when Bavel District was ceded to Sector 3" and "[t]he second meeting was when he came to meet me at my place, the Bavel District Office",³⁶¹ that after Yim Tith inspected Muol Eng's district office, Muol Eng "communicated with [Yim Tith] through his messenger once a week, and sometimes once a month",³⁶² that Muol Eng "had to report to Ta Tith" as the Sector 3 Secretary,³⁶³ that Yim Tith "instructed [Muol Eng] to grow rice [...] and to fend off the enemies" at a

³⁵² D382/22 Yim Tith Appeal, para. 161.

³⁵³ D382 Indictment, paras 372-376.

³⁵⁴ *Contra* D382/22 Yim Tith Appeal, para. 189.

³⁵⁵ D382 Indictment, paras 372-376.

³⁵⁶ D382/22 Yim Tith Appeal, paras 189-190.

³⁵⁷ D382/22 Yim Tith Appeal, para. 189.

³⁵⁸ D219/294 Muol Eng WRI, A42-43.

³⁵⁹ D219/294 Muol Eng WRI, A157. *See also* Q&A49, A127.

³⁶⁰ D382/22 Yim Tith Appeal, para. 189.

³⁶¹ D219/294 Muol Eng WRI, A53-54. *See also* A41.

³⁶² D219/294 Muol Eng WRI, A98.

³⁶³ D219/294 Muol Eng WRI, A97. *See also* A80, Q&A100.

meeting;³⁶⁴ and that Muol Eng “received orders” in writing from Yim Tith.³⁶⁵ Additionally, Muol Eng told an OCIJ investigator that Ta Mok gave Yim Tith the power to remove Northwest Zone cadres,³⁶⁶ and that Yim Tith had the authority to make arrests and resolve security problems in the sector.³⁶⁷

116. Contrary to Yim Tith’s claim that the ICIJ erred in finding that Yim Tith chaired meetings in Sector 3 and that “none of the cited witnesses stated that Mr Yim Tith appointed people to positions within the administrative structure of Sector 3”,³⁶⁸ Tep Sien stated that he was told to attend a meeting by the Phnom Sampeou District Committee (in Sector 3)³⁶⁹ at which Yim Tith introduced himself as “in charge of the sector”³⁷⁰ and at that meeting Yim Tith “appointed the persons to be in charge of the village and commune committees”.³⁷¹
117. Similarly, Chuon Than stated that he was called to attend a meeting in Phnom Sampeou³⁷² at which Yim Tith “was the one who discussed all of the points”.³⁷³ Yim Tith told attendees that “he had received a lot of information from the cooperative chairpersons regarding the thefts and the enemy’s activities at many bases”, instructed attendees to “follow up on those activities continuously”, and if enemies were discovered, “to take those people to be re-educated first before [...] smash[ing] them and report[ing] to the upper echelons”.³⁷⁴
118. Yim Tith’s efforts to undermine these witnesses is encapsulated in his erroneous suggestion that neither Tep Sien nor Chuon Than “positively identified” Yim Tith.³⁷⁵ Yim Tith’s support for this assertion: an answer from Tep Sien’s statement in which Tep Sien stated that he attended only one meeting with Yim Tith,³⁷⁶ and nothing in relation to

³⁶⁴ **D219/294** Muol Eng WRI, A81. *Contra* **D382/22** Yim Tith Appeal, para. 192.

³⁶⁵ **D219/294** Muol Eng WRI, A174-175. *Contra* **D382/22** Yim Tith Appeal, para. 192.

³⁶⁶ **D219/294** Muol Eng WRI, A64.

³⁶⁷ **D219/294** Muol Eng WRI, Q&A190.

³⁶⁸ **D382/22** Yim Tith Appeal, paras 190, 193.

³⁶⁹ **D118/87** Tep Sien WRI, A22-23. *See also* A15, 55. *See further* **D381** Dismissal Order, para. 149 referring to Chheng as Bavel District Secretary in Sector 3.

³⁷⁰ **D118/87** Tep Sien WRI, A26. *See also* A20, 24.

³⁷¹ **D118/87** Tep Sien WRI, A28.

³⁷² **D118/245** Chuon Than WRI, A4, A12.

³⁷³ **D118/245** Chuon Than WRI, A17.

³⁷⁴ **D118/245** Chuon Than WRI, A17.

³⁷⁵ **D382/22** Yim Tith Appeal, para. 194.

³⁷⁶ **D382/22** Yim Tith Appeal, para. 194, *citing* **D118/87** Tep Sien WRI, A28.

Chuon Than.³⁷⁷

119. Additional statements support that Yim Tith was the Sector 3 Secretary. For example, Loch Eng told an OCIJ investigator that Yim Tith was “on the sector committee” in Phnom Sampeou³⁷⁸ and that Yim Tith arrived in Phnom Sampeou after Loch Eng and “was assigned to take charge of the sector”.³⁷⁹ Yim Tith’s claim that “[t]here is no evidence in the Case File that Mr Yim Tith was appointed as the Secretary of Sector 3” is therefore demonstrably false.³⁸⁰

6. Yim Tith fails to demonstrate any reviewable error in the finding that he was likely Secretary of Sector 4

120. Yim Tith fails to demonstrate any reviewable error of law or fact in the ICIJ’s finding that he was likely Sector 4 Secretary in mid-1978.³⁸¹
121. Yim Tith fails to identify contradictory evidence to undermine the ICIJ’s finding. First, Yim Tith neglects to explain why the ICIJ needed to consider Loch Eng’s evidence on who was the outgoing Sector 4 Secretary to be satisfied that there is sufficient evidence that Yim Tith was the Sector 4 Secretary afterwards.³⁸² The ICIJ based his finding on Loch Eng telling OCIJ investigators on three occasions that Yim Tith was the Secretary for the area in which Loch Eng worked, which was in Sector 4.³⁸³
122. Second, Yim Tith erroneously asserts that Loch Eng could not have known he was Sector 4 Secretary because Loch Eng did not hear a formal announcement of his Sector 4 Secretary position.³⁸⁴ However, Loch Eng knew Yim Tith’s position by virtue of Yim Tith chairing meetings that district chiefs attended, and the fact that Yim Tith’s position was common knowledge where Loch Eng worked.³⁸⁵
123. Third, contrary to Yim Tith’s claim, Loch Eng did know what Yim Tith’s position encompassed and what power Yim Tith exercised as Sector 4 Secretary.³⁸⁶ For example,

³⁷⁷ **D382/22** Yim Tith Appeal, para. 194.

³⁷⁸ **D219/627** Loch Eng WRI, A12. *See also* A13, 30.

³⁷⁹ **D219/627** Loch Eng WRI, A13.

³⁸⁰ **D382/22** Yim Tith Appeal, para. 196.

³⁸¹ *Contra* **D382/22** Yim Tith Appeal, paras 198-202 (sub-ground 5.2.v); *See* Preliminary Submissions, paras 17, 20, 22 (standard of review).

³⁸² *Contra* **D382/22** Yim Tith Appeal, para. 199.

³⁸³ **D382** Indictment, fn. 1001. *See also* **D219/627** Loch Eng WRI, A4; **D382** Indictment, para. 123.

³⁸⁴ *Contra* **D382/22** Yim Tith Appeal, para. 199.

³⁸⁵ *See e.g.* **D118/96** Loch Eng WRI, A31, 33; **D219/884** Loch Eng WRI, A13. *See also* **D219/627** Loch Eng WRI, A18.

³⁸⁶ *Contra* **D382/22** Yim Tith Appeal, paras 199-200.

Loch Eng knew that Yim Tith was “there to be in charge of the sector” and to “manage it”,³⁸⁷ and had the power to order the assignment of village and commune militiamen to track cadres or ordinary people who took irregular action and to report to the district.³⁸⁸ Yim Tith also ignores additional evidence in the case file regarding the power he exercised in Sector 4.³⁸⁹

7. Yim Tith fails to demonstrate any reviewable error in the finding that he was likely a member of the Northwest Zone Committee

124. Yim Tith fails to demonstrate any reviewable error of law or fact in the ICIJ’s finding that Yim Tith was likely a member of the Northwest Zone Committee and was likely the second most powerful person in the zone after Ta Mok’s appointment as Northwest Zone Secretary.³⁹⁰
125. Yim Tith unpersuasively challenges the ICIJ’s reliance on Chhean Hea learning from Ta Pet that Yim Tith had shown Ta Pet a document from the CPK Centre that made Yim Tith responsible for the Northwest Zone.³⁹¹ Yim Tith overlooks that Chhean Hea’s knowledge about Yim Tith’s appointment is supported by other witnesses’ statements underlying the ICIJ’s finding.³⁹² Chhean Hea also learned the information from Ta Pet immediately after he saw Ta Pet meet with Yim Tith.³⁹³ Contrary to Yim Tith’s implicit assumption, Chhean Hea did not need to attend meetings with Yim Tith, to have seen him more than once, or to have known other purged cadres’ positions on the zone committee

³⁸⁷ **D219/884** Loch Eng WRI, A7, 13. *See also* **D219/627** Loch Eng WRI, A29.

³⁸⁸ **D118/96** Loch Eng WRI, A35. *See also* **D219/627** Loch Eng WRI, A18, 20-21, 4, 29.

³⁸⁹ *See* **D219/872** Touch Mary WRI, A148, 155, 165; **D219/836** Touch Mary WRI, A160, 162, 164, 168. *See also* **D219/528** Lonh Lun WRI, A91, 93.

³⁹⁰ *Contra* **D382/22** Yim Tith Appeal, paras 203-215 (sub-ground 5.2.vi); *See* Preliminary Submissions, paras 17, 20, 22 (standard of review).

³⁹¹ *See* Preliminary Submissions, para. 14 (freedom of evidence); **D382** Indictment, fn. 1002, para. 384. *Contra* **D382/22** Yim Tith Appeal, paras 205-206.

³⁹² Member, including Deputy Zone Secretary / second-in-command to Ta Mok: **D382** Indictment, paras 380 (*citing, inter alia*, **D118/69** Nuon Muon WRI, A14-17), 382 (*citing, inter alia*, **D118/86** Nhoek Ly WRI, A21-22), 383 (*citing, inter alia*, **D20** Han Thy WRI, EN 00710286, **D118/150** Hem Moeun WRI, A60-61, **D118/222** Hem Moeun WRI, A14, **D219/64** Peou Koeun WRI, A28-29), 384 (*citing, inter alia*, **D118/108** Loem (Lim) Tim WRI, A17). *See also* **D219/917** Chey Touch WRI, A11, 13, 15; **D219/34** Ek (UI) Hoeun WRI, A43; **D219/117** Top Seung WRI, A78-79; **D123/2/1.1a** Top Seung DC-Cam Statement, EN 01069524; **D105/4** Huy Krim WRI, A20; **D118/75** Huy Krim WRI, A25; **D219/515** Chheun Chhuoy WRI, A30, 47; **D1.3.11.53** Ten Cheum SOAS Interview, EN 00217752. *In practice*: *See e.g.* **D382** Indictment, para. 380 (*citing, inter alia*, **D219/974.1.2** Nop Ngim T. 5 Sept. 2016, p. 46, lines 7-10, **D118/285** Nop Ngim WRI, A55-56. *See also* **D219/298** Nop Ngim WRI, A13-14; **D219/835** Nop Ngim WRI, A85, 90, 95). *Contra* **D382/22** Yim Tith Appeal, para. 205.

³⁹³ **D118/136** Chhean Hea WRI, A13. *See also* **D118/271** Chhean Hea WRI, A26; **D118/136** Chhean Hea WRI, A12.

in order to tell OCIJ investigators what Ta Pet learned in his meeting with Yim Tith.³⁹⁴

126. Similarly, Yim Tith's erroneous assessment of Lim Tim's evidence does not undermine the ICIJ's finding. Lim Tim attended a meeting in which "Ta Tith was introduced [...] as the Chairman of the Northwest."³⁹⁵ Contrary to Yim Tith's assertions, the ICIJ never found Lim Tim to be unreliable regarding that meeting,³⁹⁶ and Lim Tim was always consistent about where the meeting occurred.³⁹⁷
127. Yim Tith also incorrectly claims that the ICIJ misrepresented evidence to find that Yim Tith had a position on the Northwest Zone Committee and was *de facto* second-in-command as well as Ta Mok's deputy.³⁹⁸ Yim Tith's piecemeal reading of evidence in the case file disregards (i) that Ta Pet had not yet been arrested when Han Thy saw Yim Tith and learned of his position on the zone committee – therefore, Han Thy's encounter with Yim Tith could not have occurred three days before the Vietnamese arrived;³⁹⁹ (ii) Hem Moeun's departure from the content of his WRI when testifying in Case 002/02 was potentially the result of interference with his family by an unidentified source the night before his testimony;⁴⁰⁰ and (iii) Peou Koeun knew cadres who were on the Sector 1 and zone committees prior to their purge and knew after the purge that Yim Tith's "position

³⁹⁴ Yim Tith misrepresents Chhean Hea's knowledge regarding Ta Nhim's and Ta Keu's positions on the Northwest Zone Committee. It was only when Chhean Hea was asked whether Ta Pet had told him about the relationship between Ta Nhim and Ta Keu that he responded "[n]o" and, when asked if he knew the *military* positions of Ta Nhim and Ta Keu, he said: "no comment". See **D118/136** Chhean Hea WRI, A6; **D118/271** Chhean Hea WRI, A44-45. See also **D219/233** Chhean WRI, A9. *Contra* **D382/22** Yim Tith Appeal, para. 206.

³⁹⁵ **D382** Indictment, para. 384 (*citing, inter alia*, **D118/108** Loem (Lim) Tim WRI, A17). *Contra* **D382/22** Yim Tith Appeal, para. 207.

³⁹⁶ The ICIJ found Lim Tim's "evidence on *the matter*" regarding the arrest of a group of people at Kampong Kol sugar factory to be unreliable when assessing the evidence on killings and disappearances at the site. See **D382** Indictment, para. 741 (*emphasis added*), EN 01619927 (entitled "Killings and disappearances"). *Contra* **D382/22** Yim Tith Appeal, paras 207-208.

³⁹⁷ Lim Tim never said that Yim Tith attended a meeting at Kampong Kol sugar factory. Unequivocally, Lim Tim said at the beginning of his first WRI that Yim Tith "stayed in Battambang town, and he never came to the sugar factory." See **D118/108** Loem (Lim) Tim WRI, A16. Yim Tith's citations to portions of Lim Tim's evidence do not say Yim Tith attended a meeting at Kampong Kol sugar factory or even use the words "Kampong Kol" or "factory". Rather Yim Tith cites to evidence of the meeting occurring at Battambang University in Battambang town. *Contra* **D382/22** Yim Tith Appeal, para. 207, fn. 609.

³⁹⁸ *Contra* **D382/22** Yim Tith Appeal, para. 208.

³⁹⁹ **D118/63** Han Thy WRI, A26-31. Ta Pet says he was arrested and imprisoned one or two months after Northwest Zone Secretary Ros Nhim was arrested. See **D34.1.9** Heng Teav *alias* Ta Pet Interview by Steve Heder, EN 01181152-53 (When Ta Nhim was arrested, his son made phone calls to Phnom Penh "around the same month – August"), EN 01181104 ("Around September or October 1978, I was arrested and imprisoned in Kampong Speu"); **D1.3.18.2** Muol Sambath *alias* Ros Nhim S-21 Confession, EN 00780859 (Northwest Zone Secretary, dated 14 Jun 1978). *Contra* **D382/22** Yim Tith Appeal, para. 208.

⁴⁰⁰ See **D219/826.1** Witness Expert Support Unit (WESU) Report, 17 Aug. 2016. *Contra* **D382/22** Yim Tith Appeal, para. 208.

was Sector Committee” and that “[l]ater Ta Tith administered the Northwest Zone as well.”⁴⁰¹

128. Yim Tith’s objection to the ICIJ’s observation that Yim Tith held positions similar to his predecessor Ta Pet is meritless.⁴⁰² Yim Tith fails to explain how drawing parallels in witness evidence regarding Yim Tith’s and Ta Pet’s Northwest Zone positions is impermissible, particularly given the consistent findings in ECCC jurisprudence on the membership of a CPK Committee.⁴⁰³ Yim Tith’s claim that he did not replace Ta Pet on the Northwest Zone Committee is negated by Ta Pet *himself* and other witnesses.⁴⁰⁴
129. Finally, Yim Tith fails to explain how Duch’s evidence that Ta Sarun was the Deputy Secretary of the Northwest Zone at the end of the DK regime prevents the ICIJ from relying on the evidence of several witnesses who observed Yim Tith in the Northwest Zone and were informed that Yim Tith was on the committee, was *de facto* second-in-command of the zone, or was Ta Mok’s deputy.⁴⁰⁵ This includes evidence that Yim Tith has not contested, as well as additional supporting evidence in the case file.⁴⁰⁶

⁴⁰¹ See **D219/64** Peou Koeun WRI, A17, 21, 23, 25-26, 40, 27-28. *Contra* **D382/22** Yim Tith Appeal, para. 208.

⁴⁰² *Contra* **D382/22** Yim Tith Appeal, para. 209.

⁴⁰³ **D382** Indictment, para. 156; Case 002-**E465** Case 002/02 TJ, para. 374; Case 002-**E313** Case 002/01 TJ, para. 219.

⁴⁰⁴ Ta Pet’s removal from post: **D34.1.9** Heng Teav *alias* Ta Pet Interview by Steve Heder, EN 01181114; **D287/2/1.1** Notes of Interview of Heng Teav *alias* Ta Pet by Steve Heder, EN 00217620; **D118/136** Chhean Hea WRI, A2. *See also* **D219/896** Chuong Luom WRI, A12. Ta Pet’s arrest: Ta Pet says he was arrested and imprisoned one or two months after Northwest Zone Secretary Ros Nhim was arrested (which was no later than 14 June 1978 according to S-21 records). This means that Ta Pet was arrested no later than approximately mid-August 1978. *See* **D1.3.18.2** Muol Sambath *alias* Ros Nhim S-21 Confession, EN 00780859; **D34.1.9** Heng Teav *alias* Ta Pet Interview by Steve Heder, EN 01181152-53, 104. *See also* **D382** Indictment, para. 362, fn. 1010; **D118/136** Chhean Hea WRI, A2, 43; **D219/233** Chhean Hea WRI, A14, 18, 21, 49. The ICP notes that Yim Tith previously deemed Timothy Carney’s article to be of low probative value. *See* **D378/5** Yim Tith Response to Final Submissions, para. 1230. *Contra* **D382/22** Yim Tith Appeal, paras 211-212.

⁴⁰⁵ Deputy Zone Secretary / second-in-command to Ta Mok: **D382** Indictment, paras 380 (*citing* **D118/69** Nuon Muon WRI, A14-17), 382 (*citing* **D118/86** Nhoek Ly WRI, A21-22), 383 (*citing* **D20** Han Thy WRI, EN 00710286, **D118/150** Hem Moeun WRI, A60-61, **D118/222** Hem Moeun WRI, A14, **D219/64** Peou Koeun WRI, A28-29), 384 (*citing* **D118/136** Chhean Hea WRI, A13, **D118/271** Chhean Hea WRI, A24-25, **D118/108** Loem (Lim) Tim WRI, A17). *See also* **D219/917** Chey Touch WRI, A11, 13, 15; **D219/34** Ek (Ul) Hoeun WRI, A43; **D105/4** Huy Krim WRI, A20. In practice: *See e.g.* **D382** Indictment, para. 380 (*citing* **D219/974.1.2**. Nop Ngim T. 5 Sept. 2016, p. 46, lines 7-10, **D118/285** Nop Ngim WRI, A55-56. *See also* **D219/298** Nop Ngim WRI, A13-14; **D219/835** Nop Ngim WRI, A85, 90, 95. *Contra* **D382/22** Yim Tith Appeal, paras 209-210.

⁴⁰⁶ *See e.g.* **D382** Indictment, fns 1005, 1010 (*citing, inter alia*, **D118/86** Nhoek Ly WRI, A4, 18-21); **D219/298** Nop Ngim WRI, A13-14; **D219/835** Nop Ngim WRI, A85, 90, 95; **D219/917** Chey Touch WRI, A11, 13, 15; **D219/34** Ek (Ul) Hoeun WRI, A43; **D219/117** Top Seung WRI, A78-79; **D123/2/1.1a** Top Seung DC-Cam Statement, EN 01069524; **D105/4** Huy Krim WRI, A20; **D118/75** Huy Krim WRI, A25; **D219/515** Chheun Chhuoy WRI, A30, 47; **D1.3.11.53** Ten Cheum SOAS Interview, EN 00217752.

8. Yim Tith fails to demonstrate any reviewable error in the finding that he likely significantly contributed to the implementation of CPK policies in the Northwest Zone (JCE A)

130. Yim Tith fails to demonstrate how the ICIJ's finding that he likely significantly contributed to JCE A⁴⁰⁷ was a reviewable error of law or fact or an abuse of discretion.⁴⁰⁸ Yim Tith erroneously splits JCE A into constituent policies and implicitly suggests that a contribution has to be made to each crime within the common plan, contrary to ECCC jurisprudence.⁴⁰⁹

a. Yim Tith fails to demonstrate any reviewable error in the finding that he was likely involved in the establishment and operation of cooperatives and worksites

131. Yim Tith fails to undermine the ICIJ's finding that he likely significantly contributed to JCE A through his involvement in the establishment and operation of cooperatives and worksites.

132. Inspections: If found admissible,⁴¹⁰ Yim Tith erroneously objects to the ICIJ relying on evidence of his conduct in the Northwest Zone before mid-1977 and at Kamping Puoy worksite.⁴¹¹ Yim Tith overlooks that the Case 004 investigation into seised allegations was not temporally limited in the Northwest Zone⁴¹² and disregards that evidence relating to Kamping Puoy is relevant to facts that are in the scope of Case 004 and was not the basis of Yim Tith's indictment.⁴¹³

133. Additionally, Yim Tith errs by suggesting that every time it is alleged that he inspected a worksite, there needs to be more than one witness who saw him at the site on that same occasion.⁴¹⁴ In any event, Yim Tith mischaracterises witnesses' evidence regarding his

⁴⁰⁷ **D382** Indictment, para. 1016i.

⁴⁰⁸ *Contra* **D382/22** Yim Tith Appeal, paras 222-243 (sub-ground 5.3.i); *See* Preliminary Submissions paras 17, 20, 22 (standard of review).

⁴⁰⁹ *See e.g.* Case 002-**D97/15/9** PTC JCE Decision, para. 38; Case 001-**E188** Duch TJ, para. 508; Case 002-**E313** Case 002/01 TJ, para. 693; **D382** Indictment, fn. 267; *Brđanin* AJ, para. 427; *Popović* AJ, para. 1378; *Simba* AJ, para. 250; *Sesay* AJ, paras 611, 1034.

⁴¹⁰ This argument is inadmissible as it amounts to a challenge to the form of the Indictment. *See* paras 57-60 (section III.C).

⁴¹¹ *Contra* **D382/22** Yim Tith Appeal, paras 222, 223 (regarding Sao Chobb), 224.

⁴¹² *See* paras 57-60 (section III.C).

⁴¹³ For an illustration of similar examples of this concept, *see e.g.* IR 66 *bis* (5); Case 002-**F36** Case 002/01 AJ, paras 908-909. Facts regarding Yim Tith's contribution to the establishment and operation of cooperatives and worksites are within the scope of Case 004. *See* **D65** Supplementary Submission on Sector 1 and Khmer Krom, paras 21, 23; **D1** Third Introductory Submission, paras 7, 11. Yim Tith is not being indicted for any crimes at Kamping Puoy worksite. *Contra* **D382/22** Yim Tith Appeal, para. 224.

⁴¹⁴ *See* Preliminary Submissions, para. 14 (freedom of evidence). *Contra* **D382/22** Yim Tith Appeal, paras 223-224.

presence at Kanhgahat Dam worksite. For example,⁴¹⁵ (i) Sorm Vanna saw Yim Tith crossing the Kanhgahat Dam area where Sorm Vanna worked to reach another area of the worksite, discussed the impact Yim Tith's presence had on him and other labourers, and attended a meeting with Yim Tith and the worksite chairperson;⁴¹⁶ and (ii) Sao Chobb, who attended meetings with Yim Tith at Kanhgahat Dam, unequivocally stated "Tith who is related to Ta Mok is the man whom I often worked with and went places with" and observed first-hand that Yim Tith was in the Northwest Zone prior to the arrival of Southwest Zone cadres.⁴¹⁷

134. Yim Tith also makes unfounded assumptions about evidence that he claims "directly contradicts" the ICIJ's reliance on Huy Krim regarding Yim Tith's visits to various worksites such as Kamping Puoy. For example, Yim Tith errs by suggesting that because Theam Robieb did not see Yim Tith at Kamping Puoy, this necessarily determines that Yim Tith was never at the worksite.⁴¹⁸ Similarly, Yim Tith's erroneous reliance on his non-exhaustive review of CPK magazines does not demonstrate that Huy Krim never saw a DK magazine article on Yim Tith's work.⁴¹⁹
135. Meetings and study sessions: Yim Tith's misidentification of evidence as "contradictory and exculpatory" is predicated on his failure to holistically assess the evidence upon which the ICIJ relied. For example, (i) Lek Phiv was not certain of Yim Tith's and Ta Pet's role when they chaired meetings together but, after Ta Pet's arrest, Lek Phiv knew that Yim Tith chaired the meetings as Sector 1 Secretary;⁴²⁰ and (ii) Tiep Tith did not "likely" confuse seeing Yim Tith for Ta Pet at a meeting at Kanhgahat Dam worksite because it occurred after Ta Vanh's arrest in June 1977 but before Ta Yan's arrest in September 1977⁴²¹ (during a time period when other witnesses were also seeing Yim Tith

⁴¹⁵ See also **D219/430** Chhoeung Bean WRI, A121, 120; *supra* fns 316, 320 (section III.E.4). *Contra* **D382/22** Yim Tith Appeal, para. 223 (regarding Chhoeung Bean), fn. 656.

⁴¹⁶ **D219/239** Sorm Vanna WRI, A2, 6-7, 13, 10; **D219/46** Sorm Vanna WRI, A41-42, 44, 43, 39-40. *Contra* **D382/22** Yim Tith Appeal, para. 223.

⁴¹⁷ **D219/956** Sao Chobb WRI, A11; **D219/981** Sao Chobb WRI, A48 (*note*: **D219/825.1.2** OCIJ S-21 Prisoner List, Number 913, EN 01222369 showing the time of Ta Vanh's arrest). See also **D219/956** Sao Chobb WRI A15, 9. *Contra* **D382/22** Yim Tith Appeal, para. 223.

⁴¹⁸ *Contra* **D382/22** Yim Tith Appeal, para. 225.

⁴¹⁹ *Contra* **D382/22** Yim Tith Appeal, para. 225, fn. 669.

⁴²⁰ **D219/210** Lek Phiv WRI, A4, 6; **D382** Indictment, para. 362; *supra* fn. 320 (section III.E.4). See also **D219/236** Lek Phiv WRI, A4, 17. *Contra* **D382/22** Yim Tith Appeal, para. 227.

⁴²¹ Tiep Tith saw Yim Tith with Ta Yan and Ta Prum after Ta Vanh's arrest and before Ta Yan was sent to S-21 on 12 Sept. 1977. See **D219/464** Tiep Tith WRI, A33, 35-37 (meeting after Ta Vanh was arrested), A28, 38 (Ta Yan and Ta Prum attended the meeting.); **D219/825.1.2** OCIJ S-21 Prisoner List, EN 01222811, Number 11667 (Ta Yan), EN 01222369, Number 913 (Ta Vanh). See also **D219/825.1.2** OCIJ S-21

in Sector 1⁴²²) and Tiep Tith stated that he only heard of Ta Pet and never saw him.⁴²³

136. Enforcement of strict discipline: Contrary to Yim Tith's assertion, the ICIJ's finding that Yim Tith was involved in the enforcement of strict discipline is based on more than just Sorm Vanna's evidence.⁴²⁴ In any event, Sorm Vanna had sufficient knowledge of Yim Tith's presence at Kanghat Dam as discussed in paragraph 133 above.⁴²⁵

b. Yim Tith fails to demonstrate any reviewable error in the finding that he was likely involved in the targeting of CPK enemies

137. Yim Tith's argument focuses on his involvement in the orchestration of the purge in the Northwest Zone, entirely failing to address the key issue – namely the findings regarding his implementation of CPK policies in the zone such as the reeducation of “bad elements”, the killing of them and “enemies”, and the targeting of specific groups.⁴²⁶
138. In any event, Yim Tith's piecemeal review of the factual findings on the purge overlooks the ICIJ's reliance on evidence that he went to the zone with his forces and Ta Mok⁴²⁷ to take control of it.⁴²⁸ Additionally, Yim Tith's disagreement with the ICIJ's reliance on Huon Choeum's evidence regarding Yim Tith's involvement in the arrest of Kampong Kol sugar factory committee members who were then replaced by Southwest Zone cadre Ta Yan⁴²⁹ omits that (i) Huon Choeum worked for the Northwest Zone military from mid-1976 to mid-1978 and learned from a zone soldier that Yim Tith “personally led his forces” to the factory,⁴³⁰ (ii) Huon Choeum's statement regarding Ta Yan's appointment is supported by witnesses who worked at the factory,⁴³¹ and (iii) DC-Cam never asked

Prisoner List, EN 01222575, Number 6273 (Ta Prum). *Contra* **D382/22** Yim Tith Appeal, para. 227.

⁴²² See e.g. **D382** Indictment, paras 354, 413 which contains findings that Yim Tith has not disputed. *Contra* **D382/22** Yim Tith Appeal, para. 227.

⁴²³ **D219/464** Tiep Tith WRI, A54.

⁴²⁴ See **D382** Indictment, para. 408. *Contra* **D382/22** Yim Tith Appeal, para. 228.

⁴²⁵ *Contra* **D382/22** Yim Tith Appeal, para. 228.

⁴²⁶ See **D382** Indictment, para. 1016i (legal finding) which is based on paras 413-426 (factual findings on Yim Tith's contributions to JCE A in the Northwest Zone); *Contra* **D382/22** Yim Tith Appeal, paras 232-237.

⁴²⁷ See, e.g. **D382** Indictment, fns 749 (*citing, inter alia*, **D118/150** Hem Moeun WRI, A60, **D219/294** Muol Eng WRI, A63), 752 (*citing, inter alia*, **D118/106** Huon Choeum WRI, A12), 748 (*citing, inter alia*, **D219/19** Sann Lorn WRI, A755, 759). *Contra* **D382/22** Yim Tith Appeal, paras 232-235.

⁴²⁸ See e.g. **D382** Indictment, fns 749 (*citing, inter alia*, **D118/150** Hem Moeun WRI, A60, **D118/86** Nhoek Ly WRI, A4, 20-21), 748 (*citing, inter alia*, **D219/627** Loch Eng WRI, A12-14). See also **D382** Indictment, fn. 749 (*citing, inter alia*, **D118/77** Nang Ny WRI, A23, **D219/64** Peou Koeun WRI, A27-29, **D219/263** Chham Luy WRI, A117, **D219/294** Muol Eng WRI, A63, **D219/233** Chhean Hea WRI, A10). *Contra* **D382/22** Yim Tith Appeal, paras 232-235.

⁴²⁹ See Preliminary Submissions, para. 14 (freedom of evidence). *Contra* **D382/22** Yim Tith Appeal, para. 238.

⁴³⁰ **D118/106** Huon Choeum WRI, A2, 12. The witness also comes from the area in which the sugar factory was located, see EN 00978416. *Contra* **D382/22** Yim Tith Appeal, para. 238.

⁴³¹ See **D118/108** Loem Tim WRI, A5; **D219/88** Pol Sot WRI, A16; **D219/157** Khay Chhauy WRI, A11; **D382**

Huon Choeum about his specific knowledge of Yim Tith or the sugar factory.⁴³²

c. Yim Tith fails to demonstrate any reviewable error in the finding that he was likely involved in forced marriages

139. Yim Tith fails to explain why his attendance prior to a forced marriage ceremony and his conduct after that ceremony do not support the finding that he significantly contributed to JCE A.⁴³³ Yim Tith disregards the evidence and findings regarding his words to those forced to marry “to live together happily” and his following-up to see if anyone did not consent to living together.⁴³⁴ Moreover, Yim Tith fails to demonstrate how the fact that the forced marriages happened after he became *de jure* secretary of the sector⁴³⁵ and that he actively participated rather than prevented those forced marriages do not support the finding of him making a significant contribution to the overall JCE.
140. Contrary to Yim Tith’s assertion, the ICIJ addressed his *mens rea* for all the crimes that arose from the implementation of JCE A.⁴³⁶

9. Yim Tith fails to demonstrate any reviewable error in the finding that he likely significantly contributed to the genocide of the Khmer Krom (JCE B)

141. Yim Tith’s inaccurate representations of findings, disregard of unfavourable evidence, and reliance on an erroneous legal position do not establish any reviewable error of law or fact or abuse of discretion in the ICIJ’s conclusion that he likely made a significant contribution to JCE B.⁴³⁷
142. Yim Tith erroneously argues that the ICIJ’s findings “lack content, context, and precise dates”.⁴³⁸ Yim Tith selectively cites only some of the findings made in the Indictment, ignoring other relevant findings.⁴³⁹ But even within that selective sample, Yim Tith’s characterisation is inaccurate. For example, for conduct in the Southwest Zone that contributed to this JCE, the ICIJ found that Yim Tith warned attendees at a meeting in

Indictment, fn. 1958. *Contra* D382/22 Yim Tith Appeal, para. 238.

⁴³² See D123/1/1.3a Huon Choeum DC-Cam Statement. *Contra* D382/22 Yim Tith Appeal, para. 238.

⁴³³ See D382 Indictment, paras 110-111, 427. *Contra* D382/22 Yim Tith Appeal, para. 242.

⁴³⁴ See D382 Indictment, para. 427. *See also* D382 Indictment, para. 367 (receiving reports on birth rates).

⁴³⁵ See D382 Indictment, para. 980.

⁴³⁶ See D382 Indictment, para. 1040. Intent can be inferred from a person’s knowledge, combined with continuing participation in the crimes. *See* D382 Indictment, paras 1019, 1021-1022, 1024; *Prlić* AJ, paras 1800, 1970, 2012, 2078; *Popović* AJ, paras 1369, 1652; *Dorđević* AJ, para. 512; *Krajišnik* AJ, paras 202, 697. *Contra* D382/22 Yim Tith Appeal, paras 230, 239, 241.

⁴³⁷ D382/22 Yim Tith Appeal, paras 244-250.

⁴³⁸ D382/22 Yim Tith Appeal, para. 247.

⁴³⁹ D382/22 Yim Tith Appeal, para. 246.

Kirivong District in mid-1975 that anyone who “ran off to the join the Yuon” was an enemy and would be killed.⁴⁴⁰ Unfathomably, Yim Tith suggests that the warning that those who collaborated with the Yuon would be killed was not a “threat”.⁴⁴¹ The ICIJ also found that Yim Tith and other Sector 13 officials attended a 10-day meeting in late 1976 in Angkor Chey District at which the Vietnamese and those who had relatives from Kampuchea Krom were considered as enemies.⁴⁴² Further, the ICIJ found that, in frequent meetings in late 1977 or early 1978 in Kirivong District attended by, *inter alia*, commune and district chiefs, Yim Tith referred to the “Yuon Khmer” when discussing internal security issues and said that the Vietnamese had infiltrated and spied on all levels of the CPK and called on attendees to report any such individual to the upper level.⁴⁴³

143. Likewise, in relation to conduct in the Northwest Zone that contributed to this JCE, Yim Tith’s claims are defeated by the findings in the Indictment. For example, the ICIJ found that at numerous locations in Sector 1 from early 1977 until at least mid-1978, Yim Tith spoke at meetings attended by military and civilian cadres about how the Vietnamese wanted to swallow Cambodia, referring to Kampuchea Krom as an example.⁴⁴⁴ The ICIJ further found that during a specific meeting at Kanghat Dam prior to August 1978, attended by 700 to 800 people including district and commune chairpersons and ordinary citizens, Yim Tith stated that Yuon and other “internal enemies” were hiding among the population and that attendees should monitor and report such enemies so that “Angkar” could kill them.⁴⁴⁵ Additionally, the ICIJ found that Yim Tith held a meeting in 1978 to discuss the “Yuon enemy” at which he stated that “[a]nyone who could speak Vietnamese and [was] connected with Vietnamese blood was [to be] executed”.⁴⁴⁶
144. Yim Tith’s assertion that the evidence relied on in the Indictment does not demonstrate a significant contribution to a genocide of the Khmer Krom in the context of an armed conflict with Vietnam is without merit.⁴⁴⁷ Yim Tith provides no support for the implicit suggestion that the Khmer Krom were a military target. Additionally, the ICIJ’s findings

⁴⁴⁰ D382 Indictment, para. 388, *citing* D219/524 Nheb Noem WRI, A20-21, 36, 39.

⁴⁴¹ D382/22 Yim Tith Appeal, para. 246.

⁴⁴² D382 Indictment, para. 389, *citing* D219/488 Moeng Vet WRI, A45-48, 51, 64-65.

⁴⁴³ D382 Indictment, para. 390, *citing* D219/406 You Phnom WRI, A10, 175-179, 117, 184-186, 191-196.

⁴⁴⁴ D382 Indictment, para. 393, *citing* D219/236 Lek Piev WRI, A19-20; D219/763 Sao Chobb WRI, A133-135; D219/368 Chhoeung Bean WRI, A87-90; D219/533 Chhoeung Bean WRI, A11-14.

⁴⁴⁵ D382 Indictment, para. 393, *citing* D219/285 Vy Phann WRI, A3-5.

⁴⁴⁶ D382 Indictment, para. 397, *citing* D219/953 Chhoeung Chhoeurt WRI, A70-72, 75, 82-84. *See also* D382 Indictment, para. 397, *citing* D118/77 Nang Ny WRI, A24, 29-30.

⁴⁴⁷ D382/22 Yim Tith Appeal, para. 247.

on the killing of Khmer Krom in areas under Yim Tith's authority repeatedly show civilian victims, including children.⁴⁴⁸ Notably, similar findings were made in the Dismissal Order.⁴⁴⁹

145. Further, Yim Tith's suggestion that the ICIJ erred by failing to explain how Yim Tith's various statements to military and civilian cadres in the Northwest and Southwest Zones "were temporally and geographically proximate or how they prompted the mass killing" displays a fundamental misunderstanding of the applicable law.⁴⁵⁰ ECCC jurisprudence provides that an accused's "contribution [to a JCE] need not be an indispensable condition, without which the crimes could or would not have been committed".⁴⁵¹ In any event, in the context of the hierarchical structure of the CPK and how policies were handed down by those in authority to be implemented on the ground, such statements are clearly relevant to the killings of Khmer Krom that occurred.
146. Additionally, Yim Tith's assertion that the ICIJ failed to explain which findings in the Indictment relate to his contribution to the JCE and which relate to the CPK's policies is misplaced.⁴⁵² The Indictment details how the CPK policy was "to eliminate the Khmer Krom",⁴⁵³ while JCE B was to "eliminate a distinct group, the Khmer Krom, or at least a substantial part of them because of their ethnicity".⁴⁵⁴ Contribution to JCE B was the same as contribution to the CPK's policy, with the Indictment clear that "Yim Tith made a significant contribution to the CPK polic[y] on [...] eliminating the Khmer Krom".⁴⁵⁵ There is no basis for the suggestion that Yim Tith's responsibility pursuant to JCE B was based on guilt by association.⁴⁵⁶

10. Yim Tith fails to demonstrate any reviewable error in the finding that he likely significantly contributed to the system of ill treatment at Wat Pratheat (JCE C)

147. The ICIJ did not "deduce[] Mr Yim Tith's contribution to JCE C from his alleged

⁴⁴⁸ See e.g. **D382** Indictment, paras 489-493, 507, 523, 533-545, 549-552, 560-561, 575.

⁴⁴⁹ See **D381** Dismissal Order paras 147, 164, 185-187, 667-669, 680 (Yim Tith authority and power), 207, 212, 219-220, 235, 250, 252 (crimes against Khmer Krom in Southwest Zone), 135, 153-154, 259, 287, 310, 328-329, 342-343, 358-360, 362, 367-368, 370, 375 (crimes against Khmer Krom in Northwest Zone).

⁴⁵⁰ **D382/22** Yim Tith Appeal, para. 249.

⁴⁵¹ Case 002-E465 Case 002/02 TJ, para. 3710, citing, *inter alia*, Case 002-F36 Case 002/01 AJ, para. 980.

⁴⁵² *Contra* **D382/22** Yim Tith Appeal, para. 246.

⁴⁵³ **D382** Indictment, para. 203. See also paras 196-275.

⁴⁵⁴ **D382** Indictment, para. 1008. See also paras 1009-1012.

⁴⁵⁵ **D382** Indictment, para. 1022. See also para. 386.

⁴⁵⁶ *Contra* **D382/22** Yim Tith Appeal, para. 248. None of the other grounds of appeal which Yim Tith refers to in paragraphs 245 and 250 have any impact or relation to the question of his contribution to the JCE to commit genocide against the Khmer Krom and are, therefore, irrelevant.

membership of the District Committee”.⁴⁵⁷ The Indictment is replete with evidence of Yim Tith’s likely authority over, and involvement in, the crimes committed at Wat Pratheat.⁴⁵⁸ Yim Tith’s continuous failure to accurately recount the content of witness statements does not establish any reviewable error of law or fact or abuse of discretion in the ICIJ’s finding that he likely made a significant contribution to JCE C.

a. Yim Tith fails to demonstrate any reviewable error in the finding that he likely visited Wat Pratheat regularly

148. Yim Tith’s disregard of core evidence defeats his claim that the ICIJ failed to consider the totality of the evidence of witnesses Dok Chann, You Phnom, Ork Chan, and Hor Yan.⁴⁵⁹
149. Yim Tith fails to explain what he alleges Dok Chann’s “contradictory testimony” to be.⁴⁶⁰ Dok Chann worked as a prison guard at Wat Pratheat in 1975 and therefore knew what occurred at the security centre. Dok Chann told investigators that Yim Tith was already in charge of Kirivong District in 1974 and was promoted to Sector 13 around 1976;⁴⁶¹ that Dok Chann attended meetings for the populace of Kirivong District at which Yim Tith’s position was always announced;⁴⁶² and that Yim Tith visited Wat Pratheat “from time to time”⁴⁶³ to meet with the Wat Pratheat chairman,⁴⁶⁴ as well as sometimes speaking with the Wat Pratheat staff including Dok Chann himself.⁴⁶⁵ Yim Tith’s characterisation of Dok Chann’s evidence as “temporally irrelevant” merely because Dok Chann stated that he worked at Wat Pratheat for a limited time is without foundation.⁴⁶⁶ Dok Chann remained within Sector 13 after being a prison guard at Wat Pratheat and subsequently returned to Kirivong District,⁴⁶⁷ demonstrating his continued knowledge of the authority structure in the area.
150. Similarly, the claim that Hor Yan, a prisoner at Wat Pratheat, gave contradictory evidence about the number of times he saw Yim Tith at Wat Pratheat is not a full representation of

⁴⁵⁷ *Contra* D382/22 Yim Tith Appeal, para. 252.

⁴⁵⁸ D382 Indictment, paras 438-469.

⁴⁵⁹ D382/22 Yim Tith Appeal, para. 253.

⁴⁶⁰ D382/22 Yim Tith Appeal, para. 253.

⁴⁶¹ D219/86 Dok Chann WRI, A7. *See also* D219/87 Dok Chann WRI, A18.

⁴⁶² D219/87 Dok Chann WRI, A16-17.

⁴⁶³ D219/86 Dok Chann WRI, A8. *See also* A9.

⁴⁶⁴ D219/86 Dok Chann WRI, A9.

⁴⁶⁵ D219/86 Dok Chann WRI, A10.

⁴⁶⁶ D382/22 Yim Tith Appeal, para. 253.

⁴⁶⁷ D219/86 Dok Chann WRI, A2.

the evidence.⁴⁶⁸ Hor Yan seemingly made distinctions in his statements in relation to the numbers of times that he saw Yim Tith at Wat Pratheath,⁴⁶⁹ that he met Yim Tith at Wat Pratheath,⁴⁷⁰ and how many times he knew Yim Tith was at Wat Pratheath to collect gallbladders.⁴⁷¹ In any event, Yim Tith's suggestion that a "mere prisoner" at Wat Pratheath could not know his identity⁴⁷² is contradicted by Hor Yan telling investigators that Yim Tith was well-known⁴⁷³ and that it had been announced in a meeting prior to the visit that Yim Tith would be coming to Wat Pratheath.⁴⁷⁴ That Hor Yan did not identify Yim Tith in a picture provided by DC-Cam (which was not appended to the interview and therefore is not verifiable) does not undermine his evidence as the ICIJ did not rely on subjective verification of Yim Tith's appearance, but on the totality of the evidence.⁴⁷⁵

151. Yim Tith also misrepresents You Phnom's evidence of not getting close to the security office as meaning that You Phnom never visited Wat Pratheath.⁴⁷⁶ You Phnom was clearly referring to the detention building in Wat Pratheath rather than the compound of Wat Pratheath,⁴⁷⁷ with You Phnom telling OCIJ investigators, *inter alia*, that he visited Wat Pratheath to see his "brother, Dok Chann, [who] was a prisoner supervisor" there.⁴⁷⁸ Yim Tith further unsuccessfully tries to undermine You Phnom's evidence by falsely attributing the evidence of another witness to You Phnom.⁴⁷⁹ Yim Tith thus fails to undercut You Phnom's evidence that he saw Yim Tith "often [coming] to inspect" Wat Pratheath.⁴⁸⁰
152. Contrary to Yim Tith's claim, Ork Chan's evidence does not refer in general terms to the period 1975-1979.⁴⁸¹ Ork Chan told investigators that he saw Yim Tith once or twice

⁴⁶⁸ **D382/22** Yim Tith Appeal, para. 253, fn. 772.

⁴⁶⁹ **D105/6** Hor Yan WRI, A22.

⁴⁷⁰ **D118/155** Hor Yan WRI, A48.

⁴⁷¹ **D219/55** Hor Yan WRI, A10, 20. The investigator inaccurately paraphrases the question and answer from the previous interview. Compare **D219/55** Hor Yan WRI, Q20 with **D118/155** Hor Yan WRI, Q&A48.

⁴⁷² **D382/22** Yim Tith Appeal, para. 253.

⁴⁷³ **D118/155** Hor Yan WRI, A119.

⁴⁷⁴ **D118/155** Hor Yan WRI, A47. See also **D219/55** Hor Yan WRI, A12-17; **D118/155** Hor Yan WRI, Q&A13, A14; **D105/6** Hor Yan WRI, A13-16.

⁴⁷⁵ *Contra* **D382/22** Yim Tith Appeal, para. 253. See **D105/6** Hor Yan WRI, A18-20 and compare with **D381** Dismissal Order, para. 188.

⁴⁷⁶ **D382/22** Yim Tith Appeal, para. 253.

⁴⁷⁷ **D219/109** You Phnom WRI, Q&A9. See also Q&A12.

⁴⁷⁸ **D219/108** You Phnom WRI, A3.

⁴⁷⁹ **D382/22** Yim Tith Appeal, para. 253, fn. 776 citing the evidence of Ork Chan.

⁴⁸⁰ **D219/108** You Phnom WRI, A8.

⁴⁸¹ *Contra* **D382/22** Yim Tith Appeal, para. 253.

while Ork Chan was detained at Wat Pratheat in 1977.⁴⁸² Yim Tith's claim that Ork Chan's evidence of seeing Yim Tith is undermined because Ork Chan was detained in a cell with no windows is misplaced.⁴⁸³ The OCIJ investigator asked the very question of how Ork Chan knew it was Yim Tith, to which Ork Chan responded "[t]he cells were dark only at night",⁴⁸⁴ adding that Ork Chan "already knew [Yim Tith] back then because I had worked in the District Production Unit".⁴⁸⁵ Moreover, Ork Chan's evidence shows that he frequently met Yim Tith during the DK regime.⁴⁸⁶ Yim Tith claims that the ICIJ made an "extraordinary finding" in relation to Ork Chan telling investigators that a picture of Yim Tith provided by DC-Cam (which was not appended to the interview and therefore is not verifiable) "look[ed] like Khieu Samphan".⁴⁸⁷ However, Yim Tith, once again, incorrectly cites the evidence, relying on a part of the Indictment relating to a witness that is not Ork Chan.⁴⁸⁸

b. Yim Tith fails to demonstrate any reviewable error in the finding that he was likely involved in interrogations at Wat Pratheat

153. Yim Tith's claim that the ICIJ erred by finding that he "directly participated in interrogations at Wat Pratheat"⁴⁸⁹ is without merit. Yim Tith does not clarify what he means by "direct participation"; however, the Indictment's conclusion was that Yim Tith likely "questioned prisoners [...] and ordered, passed on the order to, or at least acquiesced to the interrogation" of prisoners.⁴⁹⁰
154. In any event, Yim Tith's description of Tun Soun's evidence is inaccurate.⁴⁹¹ Contrary to the assertion that Tun Soun's 14 December 2014 statement is "the first time that" Tun Soun mentioned Yim Tith interrogating prisoners at Wat Pratheat,⁴⁹² Tuon Soun told investigators on 20 February 2013 that he had seen Yim Tith at Wat Pratheat "interrogating the prisoners".⁴⁹³ Yim Tith's chronology of Tun Soun's statements

⁴⁸² See **D105/5** Ork Chan WRI, A98; **D118/156** Ork Chan WRI, A75; **D219/369** Ork Chan WRI, A86.

⁴⁸³ *Contra* **D382/22** Yim Tith Appeal, para. 253.

⁴⁸⁴ **D118/156** Ork Chan WRI, A76.

⁴⁸⁵ **D118/156** Ork Chan WRI, A76.

⁴⁸⁶ **D118/156** Ork Chan WRI, A77; **D105/5** Ork Chan WRI, A56-57.

⁴⁸⁷ **D382/22** Yim Tith Appeal, para. 253. See **D105/5** Ork Chan WRI, A104.

⁴⁸⁸ **D382/22** Yim Tith Appeal, para. 253, fn. 791. The paragraph of the Indictment cited by Yim Tith relates to Hor Yan.

⁴⁸⁹ **D382/22** Yim Tith Appeal, para. 255.

⁴⁹⁰ **D382** Indictment, para. 463.

⁴⁹¹ **D382/22** Yim Tith Appeal, para. 255.

⁴⁹² **D382/22** Yim Tith Appeal, para. 255.

⁴⁹³ **D118/22** Tun Soun WRI, A16.

improperly suggests that Tun Soun first mentioned Yim Tith interrogating prisoners after being “informally questioned by OCIJ investigators on 3 December 2014”.⁴⁹⁴ However, the OCIJ investigators clearly stated that their contact with Tun Soun was “based on information given in [Tun Soun’s] previous interview” from 2013.⁴⁹⁵

155. Yim Tith also implicitly suggests that Tun Soun’s evidence may have been influenced by the disclosure of the ICP’s 3IS in 2011.⁴⁹⁶ This unfounded speculation disregards that Tun Soun’s first interview in 2008 referred to Yim Tith’s authority in Kirivong District.⁴⁹⁷ Further, Yim Tith questions how Tun Soun could have heard the questions asked by Yim Tith to prisoners if Tun Soun was not permitted to enter the prisoner detention area,⁴⁹⁸ but Tun Soun told investigators that the interrogation occurred at a monk’s monastery “around seven metres away” from where Tun Soun was detained at the wood-sawing warehouse.⁴⁹⁹ Additionally, Yim Tith’s claim that Tun Soun was unsure about whether Yim Tith was speaking to prisoners or prison staff is erroneous,⁵⁰⁰ with the answers from Tun Soun’s statements clear as to when Tun Soun was referring to prison staff⁵⁰¹ or to prisoners.⁵⁰² Finally, contrary to Yim Tith’s claim, the fact that Tun Soun was detained in two prisons and was unsure about whether such detention was early or late 1976 does not mean that his evidence cannot be relied on.⁵⁰³

156. In addition to these witnesses, other evidence indicates Yim Tith’s involvement in, and responsibility for, the conduct of interrogations at Wat Pratheat. For example, former Wat Pratheat detainee Ork Chann stated that “[a]fter Ta Tit left [Wat Pratheat], they took the prisoners for interrogation”.⁵⁰⁴ And numerous other witnesses told investigators about interrogations at Wat Pratheat,⁵⁰⁵ as well as giving evidence that the results of

⁴⁹⁴ **D382/22** Yim Tith Appeal, para. 255.

⁴⁹⁵ **D219/110** Tun Soun WRI, Q1.

⁴⁹⁶ **D382/22** Yim Tith Appeal, para. 255. *See also supra* paras 28-32 (section III.A.1).

⁴⁹⁷ **D1.3.11.56** Tun Soun OCP Statement, EN 00219283.

⁴⁹⁸ **D382/22** Yim Tith Appeal, para. 255.

⁴⁹⁹ **D219/346** Tun Soun WRI, A58-59.

⁵⁰⁰ **D382/22** Yim Tith Appeal, para. 256.

⁵⁰¹ **D219/346** Tun Soun WRI, A47, 52. Yim Tith cites A46 of Tun Soun’s statement, which appears to be in error. *See* **D382/22** Yim Tith Appeal, fn. 819.

⁵⁰² **D219/346** Tun Soun WRI, A56-57.

⁵⁰³ **D382/22** Yim Tith Appeal, para. 258.

⁵⁰⁴ **D118/156** Ork Chan WRI, A68.

⁵⁰⁵ *See e.g.* **D219/189** Soeum Chhoeun WRI, A35-36; **D219/121** Loem Ngen WRI, A31; **D118/112** Ven Nat WRI, A6-8, 11, 52; **D219/248** Ven Nat WRI, A11, 26, 31, 126; **D219/316** Mao Ngov WRI, A13, 94, 96-98, 102-104; **D219/369** Ork Chan WRI, A94-95, 99-101; **D219/87** Dok Chann WRI, A12; **D105/5** Ork Chan WRI, A79, 86.

interrogations were written and sent to the Kirivong District Committee,⁵⁰⁶ and thereby to Yim Tith.

c. Yim Tith fails to demonstrate any reviewable error in the finding that he was likely involved in killings at Wat Pratheat

157. Yim Tith inconsistently claims first that the Indictment’s finding that he ordered prisoners at Wat Pratheat be “cut open” was based “solely on the evidence of Hor Yan”,⁵⁰⁷ before subsequently stating that the finding “was based on [the] analysis of Dok Chann’s evidence”⁵⁰⁸ as well as “findings on the chain-of-command in Kirivong District above Wat Pratheat”.⁵⁰⁹
158. Yim Tith fails to demonstrate that the Indictment analysed evidence incorrectly. For example, Yim Tith’s claim that the “ICIJ failed to take into consideration that Hor Yan was in prison in 1973” is inaccurate.⁵¹⁰ The Indictment expressly addressed this and other aspects of Hor Yan’s statements before concluding that “it is likely that Hor Yan was at Wat Pratheat in 1977 to 1978”.⁵¹¹ This reasoned finding is supported by other evidence that Wat Pratheat likely commenced operations in early 1975,⁵¹² which was also accepted in the Dismissal Order.⁵¹³
159. Likewise, Yim Tith erroneously claims that the ICIJ did not consider inconsistencies in Hor Yan’s evidence regarding the incidents of Yim Tith’s involvement in prisoners being cut open to have their gallbladders removed.⁵¹⁴ Again, the ICIJ thoroughly reviewed Hor Yan’s statements before ultimately stating that in light of “the discrepancies in the interviews, it cannot be concluded with the necessary certainty that Yim Tith was directly present at the very spot where and when the prisoners had their gallbladders cut out”.⁵¹⁵ However, the ICIJ went on to hold that “it is sufficiently certain [Yim Tith] gave the order to ‘cut open’ the prisoners and that he saw the gallbladders being put in a bucket and that

⁵⁰⁶ **D219/189** Soeum Chhoeun WRI, A35; **D219/369** Ork Chan WRI, A96.

⁵⁰⁷ **D382/22** Yim Tith Appeal, para. 260.

⁵⁰⁸ **D382/22** Yim Tith Appeal, para. 261.

⁵⁰⁹ **D382/22** Yim Tith Appeal, para. 262.

⁵¹⁰ **D382/22** Yim Tith Appeal, para. 260.

⁵¹¹ **D382** Indictment, para. 455.

⁵¹² **D382** Indictment, para. 434, fn. 1154.

⁵¹³ **D381** Dismissal Order, para. 190.

⁵¹⁴ **D382/22** Yim Tith Appeal, para. 260.

⁵¹⁵ **D382** Indictment, para. 457.

he received them together with Ta Nam”.⁵¹⁶

160. Yim Tith inaccurately suggests that Hor Yan did not know the functioning of Wat Pratheat or the role Yim Tith had in Kirivong District.⁵¹⁷ However, Hor Yan told investigators that Yim Tith was on the Kirivong District Committee,⁵¹⁸ that “[e]veryone knew” Yim Tith in Kirivong District,⁵¹⁹ that Yim Tith drove a Jeep alone to attend meetings with cooperative and commune chiefs in Kirivong,⁵²⁰ and that “there was a meeting [where] [Hor Yan] was told that Ta Tith and Ta Nam would come to” Wat Pratheat.⁵²¹ Hor Yan clearly had sufficient knowledge that Yim Tith was a figure of significant authority,⁵²² who had the power to order interrogations and executions at Wat Pratheat.
161. Further, Yim Tith’s assertion that there is no “detailed evidence” that Dok Chann could have known the reporting structure at Wat Pratheat is erroneous.⁵²³ Beyond the lack of clarity of what Yim Tith means by “detailed evidence” at this stage of proceedings where sufficiency of evidence is the threshold for indictment,⁵²⁴ Dok Chann stated that he was one of only four prison staff members for around two years,⁵²⁵ and told OCIJ investigators that: Wat Pratheat was a district prison;⁵²⁶ the Wat Pratheat Security Chairman was Pring and Deputy Chairman was Chhim;⁵²⁷ the Security Chairman reported to the Kirivong District Committee;⁵²⁸ Yim Tith was the Kirivong District Secretary;⁵²⁹ Yim Tith visited Wat Pratheat to meet the Security Chairman, as well as calling the Security Chairman to the District Office;⁵³⁰ district soldiers came to take prisoners away;⁵³¹ there was a weekly meeting at which the Security Chairman would give staff instructions and tell them “about matters related to the work at the Security Office”;⁵³² and the Security Chairman would

⁵¹⁶ **D382** Indictment, para. 457.

⁵¹⁷ **D382/22** Yim Tith Appeal, para. 260.

⁵¹⁸ **D118/155** Hor Yan WRI, A14; **D219/55** Hor Yan WRI, A1, 15, 19, 25.

⁵¹⁹ **D118/155** Hor Yan WRI, A119.

⁵²⁰ **D219/55** Hor Yan WRI, A21.

⁵²¹ **D118/155** Hor Yan WRI, A47.

⁵²² *See also* **D105/6** Hor Yan WRI, A11.

⁵²³ **D382/22** Yim Tith Appeal, para. 261.

⁵²⁴ *See* Preliminary Submissions, paras 11-12 (standard of proof).

⁵²⁵ **D219/86** Dok Chann WRI, A3, 5.

⁵²⁶ **D219/86** Dok Chann WRI, A6.

⁵²⁷ **D219/86** Dok Chann WRI, A4.

⁵²⁸ **D219/86** Dok Chann WRI, A7.

⁵²⁹ **D219/86** Dok Chann WRI, A7.

⁵³⁰ **D219/86** Dok Chann WRI, A9.

⁵³¹ **D219/86** Dok Chann WRI, A13.

⁵³² **D219/87** Dok Chann WRI, A10-11.

read the reports from communes about the alleged wrongdoing of those sent to the prison.⁵³³ Dok Chann thus knew the structure and operations at Wat Pratheat.⁵³⁴

162. Finally, Yim Tith erroneously claims that that the ICIJ’s finding regarding the chain-of-command between Kirivong District and Wat Pratheat was based on “a few lines of [Ork] Chan’s testimony and the date of Hor Yan’s alleged imprisonment”.⁵³⁵ Yim Tith reiterates his erroneous claims regarding Hor Yan’s reliability, addressed in paragraph 150 above. Regarding Ork Chan, while he said that he did not hear Yim Tith give the release order, Ork Chan believed that Yim Tith had ordered his release because: Ork Chan was let go after Yim Tith had visited Wat Pratheat and checked on the prisoners,⁵³⁶ the Kirivong District Committee was superior to the Wat Pratheat Security Chairman and the latter did not have the right to release prisoners,⁵³⁷ and the answers to Ork Chan’s prison interrogation were recorded and then reported by the Wat Pratheat Security Chairman to the Kirivong District Committee.⁵³⁸ Contrary to Yim Tith’s suggestion otherwise, Ork Chan told investigators that “[t]he [Kirivong] district committee members” issued the orders to kill prisoners at Wat Pratheat.⁵³⁹

11. Yim Tith fails to demonstrate that Chan Vicheth’s evidence was relevant to the finding that he was likely among those “most responsible”

163. Yim Tith claims that the ICIJ “failed to take into account” what Yim Tith erroneously describes as Chan Vicheth’s “contradictory” evidence when assessing personal jurisdiction.⁵⁴⁰ First, Yim Tith fails to demonstrate that the ICIJ did not consider Chan Vicheth’s evidence.⁵⁴¹ Second, Yim Tith characterises, with no foundation, several of Chan Vicheth’s answers as Chan Vicheth “trying to clarify his evidence” to the ICIJ.⁵⁴² However, none of the examples Yim Tith proposes support this. For example, Yim Tith cites, *inter alia*, Chan Vicheth telling investigators that Yim Tith’s responsibilities were not fixed, that Yim Tith did not have an official position, and that Ta Mok would give

⁵³³ D219/87 Dok Chann WRI, A12.

⁵³⁴ *Contra* D382/22 Yim Tith Appeal, para. 261.

⁵³⁵ D382/22 Yim Tith Appeal, para. 262.

⁵³⁶ D219/369 Ork Chan WRI, A106-109.

⁵³⁷ D219/369 Ork Chan WRI, A97.

⁵³⁸ D219/369 Ork Chan WRI, A95. *See also* D118/112 Ven Nat WRI, A51.

⁵³⁹ D219/369 Ork Chan WRI, A101. *Contra* D382/22 Yim Tith Appeal, para. 263.

⁵⁴⁰ D382/22 Yim Tith Appeal, para. 130.

⁵⁴¹ *See* Preliminary Submissions, para. 14 (freedom of evidence).

⁵⁴² D382/22 Yim Tith Appeal, para. 130. *See also* para. 132.

tasks to Yim Tith.⁵⁴³ Far from being contradictory about Yim Tith's role, such points strongly support that Yim Tith likely had significant *de facto* authority in Sector 13 during the four-month period of 1975 about which Chan Vicheth gives evidence.

164. Contrary to Yim Tith's assertion, Chan Vicheth's evidence was clear and consistent: Yim Tith was the "zone office chairman",⁵⁴⁴ Yim Tith "was under the direct supervision of Ta Mok. He was Ta Mok's representative",⁵⁴⁵ "if Ta Mok was not present, there could be a meeting to grant Ta Tith [the internal security of the Southwest Zone] role",⁵⁴⁶ Yim Tith "was responsible for the entire western part of Takeo Province",⁵⁴⁷ "[Ta Mok] never gave power to anyone besides Ta Tith and Boran [...] his adopted son",⁵⁴⁸ and "[t]he biggest leaders in Takeo Sector were Ta Mok and Ta Tith. They supervised the whole Takeo Province and the entire zone".⁵⁴⁹
165. Chan Vicheth even wrote the following note during an interview, regarding authority in the Southwest Zone: "Ta Tith's structure was a branch of Ta Mok. In the structure, [Yim Tith] was an acting head [...] He was under Ta Mok's instruction. He used to do different work, without having a letter of appointment. He received orders verbally".⁵⁵⁰ This description clearly supports a conclusion that Yim Tith was likely a powerful *de facto* leader in the Southwest Zone.⁵⁵¹ Thus, to the extent that Yim Tith's ground 5 impugns the finding that he was among those "most responsible" for crimes during the DK regime, Yim Tith's arguments fail.

IV. CONCLUSION

166. Yim Tith's Appeal should be dismissed for failure to demonstrate any error of law invalidating the decision, error of fact occasioning a miscarriage of justice, or abuse of discretion forcing the conclusion that the ICIJ failed to exercise his discretion judiciously.

⁵⁴³ D382/22 Yim Tith Appeal, para. 130.

⁵⁴⁴ D219/815.1 Chan Vicheth DC-Cam Statement, EN 01344885.

⁵⁴⁵ D219/853 Chan Vicheth WRI, A40.

⁵⁴⁶ D219/853 Chan Vicheth WRI, A51. *See also* A52.

⁵⁴⁷ D219/853 Chan Vicheth WRI, A66.

⁵⁴⁸ D219/853 Chan Vicheth WRI, A144. *See also* A143.

⁵⁴⁹ D219/853 Chan Vicheth WRI, A101.



⁵⁵⁰ D219/853 Chan Vicheth WRI, A171.

⁵⁵¹ Yim Tith erroneously claims in paragraph 131 of his appeal that the evidence of Vann Kosal supports the claim that Chan Vicheth's statements were contradictory of the ICIJ's findings on *de facto* authority. However, Vann Kosal merely told the ICIJ that Yim Tith "was not a soldier like the men in my team". Vann Kosal was a soldier on the front lines and never met Yim Tith but was still aware of Yim Tith working at the sector level in the Southwest Zone. *See* D219/901 Vann Kosal WRI, A35-36.

In addition to raising inadmissible claims, Yim Tith’s arguments regarding: the basis, scope, and conduct of the investigation; as well as the law applied, the assessment of evidence, and the conclusions contained in the Indictment do not warrant appellate intervention. In sum, Yim Tith fails to demonstrate any error or abuse which was fundamentally determinative of the ICIJ’s discretionary decision that Yim Tith is among those “most responsible” for crimes committed during the DK regime and to indict him. Having failed to demonstrate any of his alleged errors, Yim Tith’s conclusory allegation of a cumulative impact of his grounds of appeal is without merit.⁵⁵²

167. For the foregoing reasons, the ICP requests that the PTC dismiss Yim Tith’s Appeal and send Case 004 for trial on the basis of the Indictment in accordance with Rule 77(13)(b).

Respectfully submitted,

Date	Name	Place	Signature
14 February 2020	Brenda J. HOLLIS International Co-Prosecutor		

⁵⁵² See Case 004/2-D359/24 & D360/33 PTC Closing Order Considerations, para. 168.